

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, COLLECTION OF CONTACT
DETAILS ETC AND RELATED REQUIREMENTS) REGULATIONS 2020

2020 No. 1005

1. Introduction

- 1.1 This explanatory memorandum has been prepared by 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 to take public health measures to ensure a proportionate and appropriate response to identify potential positive cases of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in England quickly and help to break potential chains of transmission. This instrument makes this provision by requiring designated venues to collect certain contact details mainly from customer, visitors and staff (as set out in the regulations), store this information for 21 days, and share it with NHS Test and Trace or local public health officials, if requested. This will enable NHS Test and Trace and local public health officials to contact people who may have been exposed to severe acute respiratory syndrome coronavirus 2 (SARSCoV-2) and give them appropriate public health advice to help stop the further spread of the virus.

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 emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22). This instrument is 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 instrument without a draft being laid and approved, so that public health measures can be taken in response to the continued serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus (SARSCoV-2). The urgency in this particular case arises from the increasing rate of diagnosed positive cases at the time of making this instrument and the concerns about the part being played in that rise by those who provide services or activities within the scope of the instrument. Further detail on these points is included in section 7 of this memorandum. This instrument will come into force on 18 September 2020 and will be published on www.legislation.gov.uk as soon as made and at the latest later that day.
- 3.2 This instrument ceases to have effect at the end of the period of 28 parliamentary sitting 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, this instrument will be reviewed after six months beginning with the day on

which the instrument comes fully into force and will expire at the end of the period of 12 months also after coming fully 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)

- 3.3 The entire instrument applies to England

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 for State for Health and Social Care, has made the following statement regarding Human Rights:

“In my view the provisions of The Health Protection (Coronavirus) Collection of Contact Details etc and Related Requirements) Regulations 2020 are compatible with the Convention rights.”

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, 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. 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 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).
- 6.4 This instrument is made under section 45C of the 1984 Act 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 syndrome coronavirus 2 (SARSCoV-2).
- 6.5 In particular, this instrument imposes requirements to facilitate contact tracing such that NHS Test and Trace can more easily contact individuals who may have been exposed to the virus and provide them with appropriate advice. This service uses a combination of dedicated contact tracing staff, local public health experts and an online service to trace the contacts of anyone who tests positive for the SARS-Cov2 Coronavirus in England. It has a key role to play in pushing down and keeping low the rate of reproduction (R) of COVID-19 and reducing the total number of infected people by identifying cases before they spread the virus.
- 6.6 This instrument will facilitate this by, in summary, requiring specified persons to display a QR code, (which is a code that can be scanned using the NHS Covid-19 app,

and which will log the person's entry to the premises on their phone). The specified person must also request that those seeking to access their services, (principally, customers and visitors (with some exemptions)), scan the QR code with the app on entry, or provide certain contact details. There are also requirements regarding collecting certain contact details of those providing services such as members of staff. These details are to be kept for a period of 21 days and provided to the NHS Test and Trace on request, for the purposes of contact tracing. This will enable NHS Test and Trace to contact anyone who may have been exposed to the virus and advise them accordingly. Where the QR code method is used, the person will receive a notification via the app that they may have been exposed. There are additional requirements on those providing services in the hospitality sector, where there will be an obligation to deny entry where customers or visitors refuse to provide contact details or scan the QR code. There are specific requirements where a group of individuals seeks entry.

- 6.7 The Regulations provide for this as follows. Regulation 5 provides that the regulations apply to specified persons who operate or occupy specified premises. Specified persons is defined in regulation 4, and specified premises are those that are occupied wholly or in part for the purposes of providing a service listed in the Schedule. Regulation 5 also provides that the requirement in regulation 16 (which is to deny entry in particular cases), does not apply where a specified person is providing a service in Part 2 of the Schedule.
- 6.8 Regulations 6 to 9 set out the obligations on specified persons regarding the displaying of the QR Code and requesting certain information. In particular, the requirement to display a QR Code is set out in regulation 6. Regulation 7 provides the requirement to request certain details where an individual seeks to enter specified premises to access a service or activity or to provide a service or activity (see regulation 9), unless that individual is under 16 or has a mental or physical disability that means they are unable to provide the details. This will include customers, staff members and visitors, subject to a number of exemptions. Regulation 8 sets out the requirements relating to where a group of individuals seeks entry. In particular, where all members of the group use the QR code, the specified person need not request any further contact details. Otherwise, the specified person must request contact details from one person in the group, (up to a maximum of 6 in the group) or contact details from all those who haven't checked in using the QR code.
- 6.9 Regulation 9 also provides a number of exemptions. Contact details (or use of the QR code) need not be requested from a constable or police community support officer or an emergency responder, acting in the course of their duty. There are also exemptions in respect of visitors who simply make deliveries.
- 6.10 The contact details to be requested are provided in regulation 10, namely, the name and surname of the individual, their telephone number or, where they do not have one, their email address or failing that a postal address. The date and time of entry should also be noted. Regulation 11 also provides that where the individual will only come into contact with one member of staff, volunteer or those providing the service, the name of that person, as well as the name of the individual who was in contact with that member of staff, should also be taken (unless the individual used the QR code).
- 6.11 Regulations 12 to 15 set out how any details collected must be stored, disposed of or disclosed. In particular, where details are requested and obtained, the specified person must keep them securely for a period of 21 days and dispose of them as soon as

reasonably practicable thereafter, unless there is a lawful basis for them to retain them. The specified person must disclose all or some of the details to the Secretary of State as soon as reasonably practicable where the Secretary of State makes such a request for the purposes of contact tracing.

- 6.12 Regulation 16 provides that a specified person as set out in Part 1 of the Schedule, (principally pubs, cafes, restaurants and private members' clubs where the main purpose of entry is to consume food and drink on the premises), must take all reasonable steps to refuse entry to an individual who has not provided the requisite details or where none of the group has done so in accordance with the requirements. This regulation also applies where the details provided are incomplete or the specified person believes they are inaccurate.
- 6.13 Regulation 17 provides that a person who contravenes any of the requirements commits an offence punishable by a fine. The instrument (see regulation 18) provides that a fixed penalty notice (a notice which enables a person to discharge their liability to criminal conviction) may be issued by an authorised persons to anyone over the age of 18 whom they reasonably believe to have committed an offence under the Regulations. The amount of the first fixed penalty is £100, reduced to £50 if paid within 14 days of a notice being issued. The amount then doubles for each subsequent penalty notice, up to a maximum of £3200.
- 6.14 Proceedings in respect of an offence under the regulations may be brought by [] (see regulation 19).
- 6.15 The regulations will be reviewed 6 months from the date they come fully into force and will expire 12 months after that date.
- 6.16 These requirements will cover the following sectors: hospitality; leisure and tourism; close contact services; and local authority venues; a full breakdown of settings can be found in the Schedule.

7. Policy background

What is being done and why?

- 7.1 On 21 March 2020, the Government took legislative measures with the making of the Health Protection (Coronavirus, Business Closure) Regulations 2020 (S.I. 2020/327). This decision sought to prevent the community transmission of disease, severe acute respiratory coronavirus 2 (SARS-CoV-2). In order to limit the further spread of that disease, the Prime Minister announced further restrictions which came into force at 1pm on 26 March 2020, prohibiting people from leaving the place they live except for very limited purposes and banning public gatherings of more than two people. The legislative elements of these restrictions were given effect in the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020. Consequent amendments and easing of restrictions were made to those Regulations in line with the Government's recovery strategy for the COVID-19 pandemic. Those Regulations were eventually revoked and replaced on 4 July by the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020, which further relaxed some of the previous national restrictions. Gradual easing of the 26 March restrictions have included reopening all non-essential retail, allowing for gatherings and overnight stays and gradually reopening the hospitality sector.

- 7.2 In line with Step 2 of the Government's recovery strategy for the Covid-19 pandemic, several amendments were made in June 2020. This included reopening all nonessential retail, except for businesses and venues where the transmission risk was still too high, as well as outdoor areas and animal attractions.
- 7.3 As part of Step 3 of the Government's recovery strategy for the COVID-19 pandemic, the Government announced the reopening of the hospitality sector from 4 July 2020. The Prime Minister also announced on 23 June 2020 further relaxations in relation to gatherings. These further relaxations were possible due to the continued fall in transmission rates and decreasing rates of hospitalisation and fatalities. The Chief Medical Officer downgraded the UK's Covid-19 Alert Level from four to three, meaning that we were no longer facing a virus spreading exponentially, though it remained in general circulation. The Prime Minister noted that if rates increased again, relaxations would be reversed as appropriate.
- 7.4 On 2 July 2020, the Government issued guidance to certain sectors (hospitality, leisure and tourism, close contact services, and facilities provided by local authorities). These settings, many of which were reopening on 4 July 2020, were asked to maintain records of staff, customers and visitors for 21 days in order to support NHS Test and Trace and local public health officials identify and notify people who many have been exposed to the virus. The designated venues that have been included in the regulation are settings where there is a higher risk of transmitting COVID-19 in the premises because customers and visitors may spend a significant amount of time in one place and potentially come into close contact with other people outside their household.
- 7.5 NHS Test and Trace and local public health officials ask for these records only when it is necessary. For example, if a premises has been identified as the location of a potential Covid-19 outbreak. NHS Test and Trace or local public health officials will work with venues, if contacted, to ensure that information is shared in a safe and secure way. The venue must share the requested information as soon as possible to help identify people who may have been in contact with the virus and minimise the onward spread of Covid-19.
- 7.6 If a venue receives a request for contact details and information, this does not mean that they must close their establishment. NHS Test and Trace or local public health officials will, if necessary, undertake an assessment and work with the venue to understand what actions need to be taken. Depending on the circumstances and the length of time that has elapsed, this could include arranging for people to be tested, asking the venue to take extra care with social distancing and/or – in some circumstances – asking customers and visitors to self-isolate. Staff are included in any risk assessment and will be advised on what to do.
- 7.7 Maintaining the records for 21 days takes into account the incubation period of the virus which can last for up to 14 days. Designated venues must keep the records for 21 days as this accounts for the incubation period of Covid-19, and for an additional 7 days for tracing and testing.
- 7.8 Identifying positive cases, notifying potential contacts and encouraging compliance with self-isolation are critical steps to breaking potential chains of transmission and slowing the spread of the virus.
- 7.9 The guidance has been in place for two months, but due to an increase in transmission rates paired with concern about non-compliance with the policy, the Government has taken the decision to make this a legal requirement in order to ensure that NHS Test

and Trace and local public health officials have the information they need to contact people and provide the appropriate public health advice.

- 7.10 **Evidence of transmission:** Public Health England publish weekly data on acute respiratory incidents reported to Health Protection Teams. These teams deal with the more complex cases requiring contact tracing, including identifying and following up local outbreaks and clusters. In the report for the week ending 6 September 2020, of the 246 incidents reported, 38 incidents were from food outlet/restaurant settings (compared to 21 the previous week and 11 the week before that), of which 34 had at least one linked case that tested positive for Covid-19. Weekly data also provides a breakdown of contacts for people who have tested positive for Covid-19. The majority of contacts are other household members and household visitors, but the next biggest known category is ‘leisure/community’ which includes eating out, attending events and celebrations, exercising, worship, arts, entertainment, recreation and community activities.
- 7.11 Where cases are linked to a household, workplace, care home, hospital or educational setting, relevant contacts or people potentially exposed to the virus can generally be identified from information provided by the person who has tested positive or the relevant setting. The venues within the scope of this policy, on the other hand, are those where there is a significant risk that public health teams would otherwise be unable to trace people potentially exposed to an outbreak.
- 7.12 **Evidence of non-compliance:** Surveys show that, under the current system of voluntary guidance, 67% and 69% of respondents (YouGov and BMG surveys respectively) were asked for their contact details some or all the time (for settings within the scope of the guidance). Only 43% of people said they were asked for contact details in all the places they visited.¹
- 7.13 Video evidence as part of media reports have shown multiple high-profile cases of establishments not adhering to Covid-19 Secure guidelines that have subsequently been linked to outbreaks (e.g., in Manchester and Preston).
- 7.14 More generally, the transmission rate has increased over recent weeks, in particular among young people. As a result, it has been considered necessary to introduce new measures to limit the spread of coronavirus. Evidence shows that the number of people testing positive for Covid-19 is increasing sharply across England. This increase has been particularly stark in the 17-21 age group, but, as in the US, Spain and France, an initial outbreak in the young has been followed by a general growth of infections in other age groups. These comparison countries are also, after a lag, beginning to show an increase in hospitalisations and mortality. The key conclusion from this data is that if the trend is allowed to continue, we could expect to follow France and Spain into a second wave of significantly increased infections. As a result, it has been considered necessary to introduce new measures to limit the spread of COVID-19.

Key provisions

- 7.15 The purpose of NHS Test and Trace is to help break chains of transmission of the virus and help people return to and maintain more normal lives. One of the ways in

¹ YouGov surveyed 20,308 people over the period (8th – 26th July), with 13% having visited a pub, restaurant, cinema, hairdressers or attraction in the last 24 hours.

which NHS Test and Trace achieves this objective is by identifying locations linked to multiple new cases of Covid-19 and, where appropriate, providing advice to people known to have been present at those locations at the relevant time. Without the data from staff, customer and visitor logs, local public health teams will not be able to locate and inform people who may have been exposed to the virus in this way. The purpose of mandating this policy is to address the outstanding risks as outlined by the evidence of non-compliance and transmission. This approach was announced by the Prime Minister on 9 September 2020.

7.16 Under this policy there will be:

- a legal duty on designated venues to ask all customers and visitors to provide contact details, and to display an official NHS QR code poster so that customers and visitors can scan the QR code using their NHS Covid-19 App. Use of the App is an optional alternative to providing contact details. If there is more than one person in the group:
 - a) the venue should record the names and contact details of all members of the group who have not checked in using the QR code; **or**
 - b) the venue should record name and contact details of a ‘lead member’ of the group, and the number of people in the group. The lead member can represent a group of 6 people or less;
 - c) if each member of the group chooses to check-in using the QR code, the venue need not take the name or contact details of any member of the group. Guidance will ask venues to look at the individual’s phone screen to verify that they have checked in.
- a duty on the hospitality sector to deny entry to customers and visitors who do not provide this information, unless they have checked in using the QR code. If there is more than one person in the group:
 - all members of the group can be admitted, provided that at least one of the group provides their name and contact details to represent a group of 6 people or less or all members of the group have checked in using the QR code.
 - if no member of a group provides their name and contact details, all the group must be refused entry, with the exception of any individuals who check in using the QR code.
- a duty on all designated venues to have a record of all staff (including volunteers and agency workers), working on the premises on a given day, the time of their shift, and their contact details.
- a duty on all designated venues to hold staff, customer and visitor details for 21 days, and to make these available to NHS Test and Trace or local authority public health officials, if requested.
- fixed penalties for businesses that do not meet these requirements.

7.17 The designated venues that have been included in the instrument are settings where there is a higher risk of transmitting COVID-19 in the premises because customers and visitors may spend a significant amount of time in one place and potentially come into close contact with other people outside their household. These requirements will cover the following sectors: hospitality; leisure and tourism; close contact services; and local authority venues; a full breakdown of settings can be found in the Schedule.

- 7.18 In addition, there is a duty on the hospitality sector to deny entry to customers and visitors who do not provide this information, unless they have checked in using the official NHS QR code. This additional requirement on the hospitality sector has been decided for the following reasons:
- first, there may often be a heightened risk of close contact with other visitors or customers arising from the length of time spent on premises, the scope for contact with multiple other visitors or customers in a confined space and, where alcohol is served, the greater the risk that people do not comply with social distancing measures.
 - second, this sector has been an area of particular concern in terms of non-compliance. In Public Health England's report for the week ending 6 September 2020, of the 246 incidents reported, 38 incidents were from food outlet/restaurant settings (compared to 21 the previous week and 11 the week before that), of which 34 had at least one linked case that tested positive for Covid-19. This sector includes venues where customers may want to turn up spontaneously rather than pre booking which risks contact tracers being unable to trace contacts and provide public health advice.
 - third, hospitality venues have existing, established duties of refusal of service to customers to comply with licensing legislation in a way that other sectors do not. Other settings, such as a library, may be in part staffed by volunteers. Therefore, refusing entry to someone is likely to be far more challenging than for a public house, where refusal of entry because someone is too drunk would be something that they would have dealt with before.
- 7.19 There are exemptions from this requirement for visits in exceptional circumstances by a constable or police community support officer acting in the course of their duty; visits by an emergency responder (other than a constable) acting in their capacity as an emergency responder; and visits for the sole purpose of making postal, courier or other deliveries or collection services. There is an exemption on the duty of the hospitality sector to refuse entry to those who do not provide their details in relation to people who are unable to provide the details specified in the regulations owing to a physical or mental disability or other reason related to their health; or under the age of 16. As with the wider coronavirus restrictions, discretion and judgement is expected when reasonable excuses and exemptions in the circumstances are considered. Further information on this is available in the relevant guidance published on GOV.UK.
- 7.20 Where designated venues are found to be in breach of the regulations, a local authority officer can issue a fixed penalty notice (FPN), with fines of £1000 for the first offence, £2000 for the second, £3000 for the third and £4000 for the fourth. The amount of the FPN will be reduced to 50% of the total if paid within 14 days of a notice being issued. This aligns with the penalty regime in the Health Protection (Coronavirus, Restrictions) Business Obligations (England) Regulations 2020.
- 7.21 The instrument therefore support the overall aims of the 1984 Act to protect the public from threats arising from infectious disease or contamination from chemicals or radiation by taking measures to facilitate more effective contact tracing and thereby reducing the transmission of Covid-19.

- 7.22 We note that there are other precedents for this action with Scotland and Wales having mandated the collection of customer and staff details in some settings.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union 2018

- 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 Not applicable.

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 includes information in relation to the tightening of restrictions and to the requirements brought about by these amendments. Specific guidance on these requirements can be found at: <https://www.gov.uk/guidance/maintaining-records-of-staff-customers-and-visitors-to-support-nhs-test-and-trace#sectors-that-this-guidance-applies-to>

12. Impact

- 12.1 This instrument is a temporary provision forming part of the Government's response to Covid-19. As this instrument will cease to have effect after less than 12 months, a Regulatory Impact Assessment is not required and would be disproportionate.

13. Regulating small business

- 13.1 The instrument applies to activities that are undertaken by small businesses. There may be some business impacts caused by these requirements; however, currently, these impacts are not possible to calculate. For this reason, a complete Impact Assessment has not been conducted and is not required as the instrument will expire in under one year.
- 13.2 The requirement to have a system in place to gather contact details has been in guidance for two months, and therefore many venues in scope will already have one in place and will already collect details through their own booking systems. Implementing this should represent a low impact on businesses.
- 13.3 The requirement to display an official NHS QR code poster will not be onerous for businesses. The venue need only register on the official website and print off a poster themselves, therefore having minimal cost to the business. The posters can be created at <https://www.gov.uk/create-coronavirus-qr-poster>.
- 13.4 The Government has implemented a number of financial support schemes during the COVID-19 pandemic, and so no further action is needed to implement the requirements in these Regulations.

14. Monitoring & review

- 14.1 This instrument includes a requirement to review the Regulations in six months of them coming fully into force. The Regulations will cease to have effect at the end of the period of 12 months of them coming into force.

15. Contact

- 15.1 Alexandra Greenway, Department of Health and Social Care:
Alex.Greenway@dhsc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Ben Dyson, Department of Health and Social Care: ben.dyson@dhsc.gov.uk can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Matt Hancock, the Secretary of State for Health at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.