

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, WEARING OF FACE
COVERINGS IN A RELEVANT PLACE) (ENGLAND) (AMENDMENT) (NO. 3)
REGULATIONS 2020

2020 No. 1028

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 to take public health measures to ensure a proportionate and 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, Wearing of Face Coverings in a Relevant Place) (England) Regulation 2020 (S.I. 2020/791) (“the Face Coverings Regulations”) to require the wearing of a face covering by staff or other workers working in public houses.

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). The Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) (Amendment) (No 3) Regulations 2020 (“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 2 (SARS-CoV-2). The Amending Regulations came into force at 12.01am on 24 September 2020 and are published on www.legislation.gov.uk. The Amending Regulations cease 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, the Face Coverings Regulations, which this instrument amends, provide that they expire at the end of the period of twelve months beginning with the day on which they came into force.
- 3.2 The purpose of the Amending Regulations is to make amendments to the Face Coverings Regulations in order to extend the scope of the requirement to wear a face covering to staff working in indoor public areas of relevant places, and where they

come or likely come into contact with members of the public, specifically public houses.

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 only.

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, 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) (England) (Amendment) (No 3) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Part 2A of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”), as inserted by the Health and Social Care Act 2008 (“the 2008 Act”), provides a legal basis for protecting 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. Overall, the amended 1984 Act sets out a framework for health protection which requires many of the detailed provisions to be delivered through regulations.
- 6.2 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 can come from outside England and Wales.
- 6.3 This instrument is made under section 45C to support an effective response to reduce public health risks posed by the incidence and spread of SARS-CoV-2. This instrument is part of a wider set of measures introduced to respond to those health risks, as described in the Explanatory Memorandum to the Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 4) Regulations 2020 (S.I 2020/588).
- 6.4 The instrument makes a minor amendment to the Face Coverings Regulations which require individuals to wear a face covering when in a “relevant place” and staff and workers to not be exempt from wearing them in some relevant places. A relevant place means any premises, or any part of premises, listed in Schedule 1 or a transport hub which are indoors. Schedule 3 of the Face Covering Regulations lists the relevant places in which the exemptions from the requirement to wear face coverings by employees or persons providing services do not apply. This instrument updates that Schedule to include public houses.
- 6.5 The amending regulations insertion of public houses into Schedule 3 corrects an omission whereby public houses were inadvertently not included by Health Protection

(Coronavirus, Wearing of Face Coverings in a Relevant Place and on Public Transport) (England) (Amendment) (No. 3) S.I 2020/1026 which come into force on 24th September 2020. These amending regulations are therefore issued free of charge to all known recipients of Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place and on Public Transport) (England) (Amendment) (No. 3) S.I 2020/1026. The issue was identified and corrected promptly. Schedule 3 includes public houses as a relevant place in which the exemptions from the requirement to wear face coverings by employees or persons providing services do not apply.

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 Since 11 May, the Government has advised the public to wear face coverings in enclosed spaces where they might find it difficult to maintain social distance and come into contact with those they would not usually meet. Face coverings have been mandatory on public transport in England since 15 June, and since 24 July the wearing of face coverings has been mandatory in shops and supermarkets and transport hubs. On 31 July, the Prime Minister announced that the requirement to wear a face covering in these settings will be extended to cover further indoor public places such as places of worship, museums, galleries and other places listed in the Face Covering Regulations as amended. On 22 September, the Prime Minister announced in the House of Commons that the requirement to wear a face covering would be extended to further hospitality settings, and that staff in customer facing roles would also be required to wear a face covering in certain circumstances, for example in retail and hospitality settings.
- 7.3 In order to increase the protection offered to members of the public and workers in hospitality settings, these Amending regulations insert public houses into Schedule 3 as a relevant place in which the exemptions from the requirement to wear face coverings by employees or persons providing services do not apply.
- 7.4 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. Distancing (>2 metres) remains the preferred option where possible. In such settings, evidence would support a policy where cloth masks could be used for short durations where unavoidable closer interactions with others are occurring or likely. This advice does not replace or change existing advice on other measures – such as hand washing, social distancing and self-isolation. Mandating the use of face coverings by staff and other workers working in customer facing roles, when used alongside other measures, therefore offers a reasonable protective measure to reduce the risk of infection or contamination by a virus that presents a significant harm to public health.

- 7.5 The Amending Regulations 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. The World Health Organisation advised on 5th June 2020 that fabric face coverings should be used in public where social distancing is not possible.
- 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 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 on wearing and making face coverings at <https://www.gov.uk/government/publications/face-coverings-when-to-wear-one-and-how-to-make-your-own/face-coverings-when-to-wear-one-and-how-to-make-your-own>. 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.
- 12. Impact**
- 12.1 The impact on business, charities or voluntary bodies is expected to be positive. Requiring staff members and other workers to wear face coverings in public houses may give members of the public confidence to visit these premises which may increase visitors to these settings bringing benefit to the business. The policy may also offer added protection to employees working in these settings, in addition to the existing mitigations that have been put in place by businesses already.
- 12.2 The Department has also included a range of exemptions to the Face Coverings Regulations which continue to apply and which enable staff to remove their face coverings to communicate with customers if this is needed. This ensures that this policy does not unfairly discriminate against those with protected characteristics.
- 12.3 There is no significant impact on the public sector.
- 12.4 An Impact Assessment has not been prepared for this instrument because it amends an instrument that will cease to have effect at the end of a 12 month period, beginning on the day on which it came into force (24 July 2020) and which was made urgently and is time limited as part of the Government's response to COVID-19.
- 13. Regulating small business**
- 13.1 No specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

- 14.1 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.
- 14.2 This instrument amends the Face Coverings Regulations and the expiry and review provisions set out in those Amending 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 (24 July 2020).

15. Contact

- 15.1 Sameen Farouk at the Department for Health and Social Care, Sameen.Farouk@dhsc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Michael Dynan-Oakley, Deputy Director for PPE policy, at the Department for Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Bethell of Romford, at the Department for Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.