

EXPLANATORY MEMORANDUM TO
**THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (SELF-
ISOLATION) (ENGLAND) REGULATIONS 2020**

2020 No. 1045

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for 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 of enabling public health measures to be taken to reduce the public health risks posed by the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), which causes the disease Covid-19.
- 2.2 Subject to specified exemptions, the instrument requires people who have been notified that they have tested positive for Covid-19 and their close contacts to self-isolate for designated periods based on when an infected person's symptoms began, when an infected person took their test for Covid-19 or when close contact with an infected person took place. It requires people who are notified that they must self-isolate and to provide information to contact tracers about where they will be staying for their period of self-isolation. The instrument also prohibits employers or agencies from allowing workers who are required to self-isolate to work in any place except the place where they are self-isolating. The instrument creates offences and the penalties that apply for breaches of its requirements

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 these 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 urgency in this particular case arises from the increasing rate of diagnosed positive cases at the time of making this instrument.
- 3.2 This instrument will come into force on 28 September 2020 and will be published on www.legislation.gov.uk as soon as possible thereafter. 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 before the end of the period of six months beginning with the day on which the instrument comes into force and will expire at the end of the period of 12 months after coming into force.

Proportionality

- 3.3 The Secretary of State for Health and Social Care considers these measures a proportionate response to the public health risks arising from the resurgence of coronavirus in England. In his statement to the public on 22 September 2020 the Prime Minister set out the rationale behind the Government’s decision to implement tougher measures to combat the coronavirus pandemic. Against the background of almost a million deaths and severe damage to economies across the world, the country is seeing the virus spreading in an exponential way and hospital admissions climbing. Further action to suppress the virus, including new restrictions on personal liberty and penalties for non-compliance, are considered necessary to save lives, protect the NHS and the country’s economy. These measures are part of that response.

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)

- 3.4 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 Secretary of State for Health and Social Care has made the following statement regarding Human Rights:

“In my view the provisions of the Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) 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 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 inside or outside 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).
- 6.5 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 SARSCoV-2.
- 6.6 In particular, this instrument imposes requirements on people who are notified that they are legally required to self-isolate. It has a key role to play in slowing or preventing a rise in the rate of reproduction (R) of Covid-19 and reducing the total number of infected people by restricting the movement of people most at risk of spreading the virus.
- 6.7 The Regulations provide for this as follows. Regulation 2 requires adults who have been notified, otherwise than through the NHS Covid-19 app that they have tested positive for coronavirus or have been identified as a close contact of someone who has tested positive, to self-isolate for a specified period. Self-isolation means that they must remain in their home or another suitable place for that period. The regulations provide specified exceptions from the requirement to remain in self-isolation. These include, for example, leaving the place of self-isolation by reason of seeking urgent medical assistance, fulfilling a legal obligation, and, where it is not possible to do so by another means, to obtain basic necessities such as food or medical supplies. People required to self-isolate must provide, when requested, the details of the address at which they will be staying. People who have tested positive will also be required to provide the names of other people living in the same household as them. Where an adult has responsibility for a person under the age of 18 the adult must secure, as far as reasonably practicable, that the young person self-isolates for the specified period and notify the address at which they will do so. They must also provide the names of other people living in the household at that address. The regulation specifies the people with the power to issue the notifications that trigger the duty to self-isolate. These include people working for the NHS Test and Trace service, Public Health England and others working on communicable disease surveillance in an official capacity. Notifications that are withdrawn are treated as never having been given.
- 6.8 Regulation 3 sets out periods of self-isolation. These differ depending on whether a person has tested positive for coronavirus, lives in the same household as a person who has tested positive for coronavirus or is a close contact of a person outside their household who has tested positive. The periods take account, where known, of the date at which symptoms of SARSCoV-2 first appeared. For someone who has tested positive for SARSCoV-2 the requirement is to self-isolate until 10 days after the date on which their symptoms began, if that is known and has been reported, or otherwise 10 days after the date of their test. For people who are notified that they are a close contact of another household member who has tested positive, the requirement is to isolate until 14 days after the date that the other household member's symptoms began, if that is known and has been reported, or otherwise until 14 days after the date of that person's test. For people who are notified that they are a close contact of someone outside their household who has tested positive the requirement is to isolate until 14 days after the date that they were last in contact with that person.
- 6.9 Regulation 4 amends the Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020, which create duties for

designated venues in relation to collection of the names and contact details of customers, visitors and staff. The amendments allow district councils as well as county councils to issue fixed penalty notices; provide that, in addition to the Secretary of State, a relevant person must also disclose any details he has retained pursuant to the Regulations to a Public Health Officer on request; and to provide that it is an offence not to comply with a requirement in regulations 14 and 16 of the Regulations, namely for people who hold contact details to disclose them as soon as reasonably practicable when requested by the Secretary of State and, in the case of the hospitality sector, to refuse entry to people who have not provided their contact details. The regulation also amends the fixed penalty notice amounts to fall in line with those in regulation 12, and makes a small amendment, for clarity, to the list of services in the Schedule.

- 6.10 Regulations 5 and 6 define a number of terms, such as ‘close contact’, that are used in the instrument.
- 6.11 Regulation 7 stipulates that the employer of a worker or agency worker who is required to self-isolate in accordance with regulation 2 of this instrument or regulation 4 of the International Travel Regulations should not knowingly allow them to work other than at the designated place of isolation, during the period of isolation.
- 6.12 Regulation 8 applies where the worker is aware of the requirement to self-isolate and is due to work or undertake any work-related activities other than at the designated place of isolation. It requires a worker to notify their employer of their requirement to self-isolate as soon as reasonably practicable and not later than when the worker is next due to start work in the isolation period.
- 6.13 Regulation 9 follows the approach of regulation 8 but applies to agency workers. It sets out who they should notify of their requirement to self-isolate, reflecting the particular employment arrangements these workers can have. Given these different arrangements, regulation 9 also sets out requirements for the recipient of the notification, if they are an agent or principal, to notify the employer and for the employer to notify an organisation to which the agency worker has been supplied.
- 6.14 Regulation 10 deals with enforcement. An authorised person, who could be a police officer or a person designated by the Secretary of State, for example, to act in support of enforcement, is given power to direct people to return to the place that they should be self-isolating or to remove them to that place. Where an authorised person believes that a child is repeatedly failing to comply with regulation 2 they may direct the person responsible for the child to ensure compliance, as far as that is possible. Reasonable force may be used to enforce the regulations’ requirements if that is necessary. An authorised person is allowed to exercise power under this regulation only if they have reasonable grounds for believing that it is necessary and proportionate to do so.
- 6.15 Regulation 11 deals with offences under these regulations. Offences are punishable on conviction by fines although fixed penalty notices are available as an alternative means of dealing with the case by regulation 12. A person commits an offence under regulation 11(1) if they fail, without reasonable excuse, to comply with their requirements. If someone commits an offence in a situation in which they believe they would come into close contact with another person or group, do so and are reckless as to the consequences for that person or group, they commit an offence under regulation 11(2) and a larger fixed penalty can be imposed. Other offences are

created by the regulation. It is an offence under regulation 11(3) to obstruct someone carrying out an enforcement function or under regulation 11(4) to contravene a direction given under regulation 10 without reasonable excuse. Under regulation 11(7) it is an offence for someone required to self-isolate if they knowingly provide false information about the address at which a person will be self-isolating or knowingly falsely state that someone is a close contact of someone who has tested positive for SARSCoV-2. As a result of regulation 11(8), corporate bodies can commit the same offences and, where an officer of that body can be shown to have acted with consent, connivance or negligence, they can also be prosecuted and proceeded against. Police officers have a power of arrest should that be necessary.

- 6.16 Regulation 12 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 person to anyone they reasonably believe has committed an offence under the regulations. An offence under regulation 11(1) that involves contravening a requirement under regulation 2 or 11(4) will mean a fixed penalty of £1,000 for a first offence, £2,000 for a second, £4,000 for a third and £10,000 for each subsequent offence. For an offence under regulation 11(2) the amount of the first fixed penalty will be £4,000 and the amount of each subsequent penalty will be £10,000. For offences arising from regulation 7 (requirements on employers), the penalty will be £1,000 for a first offence £2,000 for a second, £4,000 for a third and £10,000 for each subsequent offence. For offences arising out from regulation 8 or 9(2) (worker's duty to inform their employer or agent that they have been notified to self-isolate), the amount of the fixed penalty will be £50. Where the offence arises from 9(4) or (6) (duties on those receiving such information from workers), the fixed penalty will be £1,000. Provision is made for how payments can be made.
- 6.17 Regulation 13 provides that prosecutions for these offences may be brought by a local authority or the Crown Prosecution Service.
- 6.18 Regulation 14 sets out powers to use and disclose 'relevant information'. Those authorised under regulation 2(4) to notify people that they have tested positive for coronavirus or that they are a close contact of someone who has tested positive can share relevant information. Relevant information includes the contact details of someone who has been required to self-isolate, the date of notification and the period of self-isolation where that is necessary to carry out a function under these regulations to prevent danger to public health caused by Covid-19 or to monitor its spread. People receiving such information can disclose it to another person only if the recipient needs it for a function under the regulations or for preventing danger to public health caused by Covid-19 or for monitoring its spread.
- 6.19 Regulation 15 allows for information notified to the Secretary of State under regulation 2 to be used in criminal proceedings relating to these regulations.
- 6.20 Regulation 16 requires the Secretary of State to review the need for the requirements imposed by these regulations within six months of their coming into force. The regulations automatically expire 12 months after they come into force.

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 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 has 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, the Prime Minister 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 There have been increases in the number of positive cases and the rate of transmission rate over recent weeks. In parallel, Directors of Public Health have identified a number of instances where workers have felt compelled to attend work, notwithstanding the fact that they have told their employer that they are required to self-isolate. As a result, it has been considered necessary to introduce new measures to limit the spread of coronavirus.

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 Not applicable.

10. Consultation outcome

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

11. Guidance

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 is not available at the time of the laying of this instrument but will be published early in week commencing 28 September 2020 at: www.gov.uk/government/publications/covid-19-stay-at-home-guidance/stay-at-home-guidance-for-households-with-possible-coronavirus-covid-19-infection; and www.gov.uk/government/publications/guidance-for-contacts-of-people-with-possible-or-confirmed-coronavirus-covid-19-infection-who-do-not-live-with-the-person

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 This 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.

14. Monitoring & review

- 14.1 This instrument includes a requirement to review the Regulations within six months of them coming 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 Ian Spurr at the Department of Health and Social Care: ian.spurr@dhsc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Catherine Pearson and Madeleine Percival, Department of Health and Social Care: PearsonPercival@dhsc.gov.uk can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Secretary of State for Health at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.