

EXPLANATORY MEMORANDUM TO
THE SAFEGUARDING VULNERABLE GROUPS ACT 2006 (REGULATED
ACTIVITIES) (CORONAVIRUS) ORDER 2020

2020 No. 433

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 The Order specifies that the activity of testing for coronavirus via the collection of saliva or mucus from the mouth and or nose of an individual, is not to be treated as a regulated activity under the provisions in the Safeguarding Vulnerable Groups Act 2006¹ (“the 2006 Act”). The testing of coronavirus is carried out by particular groups; members of Her Majesty’s Forces, employees of Boots Company plc, and individuals engaged to work with Sodexo Holdings Limited.
- 2.2 A person included in a specified children's or adults' list maintained by the Disclosure and Barring Service is barred under the 2006 Act from regulated activity relating to children and or adults. The 2006 Act provides for the commission of criminal offences, if individuals who are included on the barred lists held by the Disclosure and Barring Service engage in or are permitted to engage in regulated activity.
- 2.3 The 2006 Act lists those activities that are regulated activities in Schedule 4, and includes healthcare provided to an adult or child under the direction or supervision of a healthcare professional.
- 2.4 The purpose of the order is to specify that testing for coronavirus via the collection of saliva or mucus from the mouth and or nose of an individual, is not to be treated as a regulated activity such as healthcare. This provision is to remain in force for 18 months beginning with the date the Order comes into force.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

- 3.1 This instrument will come into force within 21 days of being laid before Parliament. This instrument is also being laid during a recess period that, it is acknowledged, may extend beyond its currently scheduled 4-week period. Laying during a potentially lengthy recess period, and the short time between the laying date and this instrument being brought into force, is so that the provisions are available with immediate effect in the context of the coronavirus pandemic and in particular increasing testing capacity.

¹ 2006 c. 47

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 and Wales.
4.2 The territorial application of this instrument is England and Wales.

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 This instrument is being made by the Secretary of State, in exercise of the powers conferred by paragraphs 6 and 9 to Schedule 4 of the Safeguarding and Vulnerable Groups Act 2006.
6.2 The provision treats coronavirus testing by specified persons, via the removal of saliva or mucus from the mouth and nose, no longer as a regulated activity. The Order will last for 18 months from its coming in to force date.

7. Policy background

What is being done and why?

- 7.1 As part of the government's coronavirus testing strategy, the Department of Health and Social Care is establishing a number of testing sites for critical workers. At many of these sites, tests are conducted by trained test operatives who have been trained in the testing. This statutory instrument establishes that conducting coronavirus tests is not a regulated activity for the purposes of working with children and adults.
7.2 The reason for establishing this in legislation is to minimise unnecessary operational disruption to the testing programme by the Disclosure and Barring Service conducting vetting and barring checks for all test operatives from the armed forces, Boots, and Sodexo. This in turn will help to maximise the number of tests that the government is able to carry out.
7.3 Measures are being taken to minimise contact between testers and those being tested. Testing is at the lower end of the spectrum of healthcare in terms of the proximity of access to children and adults that the safeguarding legislation was designed to address.

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 None.

10. Consultation outcome

- 10.1 Due to the urgent nature of the coronavirus pandemic and the need to increase testing capability, the Department has not been able to conduct a full consultation and considers that this is a necessary and proportionate approach in the context of the pandemic. The Department has engaged in discussions with those relevant stakeholders who are agreeing to undertake mass testing.

11. Guidance

- 11.1 The Department is not intending to publish guidance.

12. Impact

- 12.1 There is no significant impact on businesses, charities or voluntary bodies.
- 12.2 An Impact Assessment has not been prepared for this instrument because no impact on business is foreseen and is not quantifiable.
- 12.3 The impact of the legislation will be to remove an administrative burden of applying for vetting and barring checks with the Disclosure and Barring Service, for a very small number of companies (Boots and Sodexo) who are engaged to provide staff to undertake testing for coronavirus.
- 12.4 There is no, or no significant, impact on the public sector.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that the disapplication of coronavirus testing from the scope of regulated activities under the 2006 Act, will only apply for a period of 18 months.

15. Contact

- 15.1 Andrew Ford at the Department of Health and Social Care andrew.ford@dhsc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Rod Latham, Director for Operational Policy, for the Covid-19 Keyworker Testing Programme at the Department for Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Matt Hancock, the Secretary of State at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.