

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, WEARING OF FACE COVERINGS ON PUBLIC TRANSPORT) (ENGLAND) REGULATIONS 2020

2020 No. 592

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport 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.

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 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 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 Regulations came into force on 15th June 2020 and are published on www.legislation.gov.uk. The Regulations cease to have effect at the end of the period of 28 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 Regulations themselves provide that they expire at the end of the period of twelve months beginning with the day on which they came 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)

- 3.2 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 Transport, Grant Shapps MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) 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 requires passengers to wear a face covering when using public transport services. Regulation 2(2) defines the term “public transport service” and what services are excluded from the Regulations, including school transport services, taxis and private hire vehicles and cruise ships.
- 6.5 Regulation 3(1) requires a person to wear a face covering, unless they have a “reasonable excuse”. Regulation 3(3) sets out the categories of people to whom the Regulations do not apply, and Regulation 4 provides a non-exhaustive list of what may constitute a “reasonable excuse” pursuant to Regulation 3(1).
- 6.6 Regulation 5(1) permits a relevant person (as defined in Regulation 5(9)) to deny boarding of a vehicle providing a public transport service to a person not wearing a face covering. Regulation 5(2) empowers a relevant person to direct a person either to wear a face covering or disembark from a relevant vehicle.
- 6.7 Regulation 5(3) and (4) empowers a constable to remove a passenger from a relevant vehicle, using reasonable force if necessary, if they fail to comply with a direction to disembark from the vehicle given under Regulation 5(2).
- 6.8 The instrument includes provision that a person who contravenes this regulation commits an offence, punishable by a fine.
- 6.9 The instrument provides that a fixed penalty notice (a notice which enables a person to discharge their liability to criminal conviction) may be issued by authorised persons;

as defined by Regulation 7(11): a constable, police community support officer, a TfL officer, or a person designated by the Secretary of State for the purposes of this regulation, such as an operator of a public transport service. The fixed penalty notice may be issued to a person over 18 whom they reasonably believe to have committed an offence under the Regulations. The amount of the fixed penalty is £100, reduced to £50 if paid within 14 days of a notice being issued.

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 Prime Minister addressed the nation on 23rd March 2020 to announce the need for further restrictions to address the Covid pandemic. Regulations made on 26th March 2020 (the Health Protection (Coronavirus, Restrictions)(England) Regulations 2020) provided a consolidated set of the previous restrictions and closures and extended them to a longer list of businesses and premises delivering non-essential services, as well as requiring persons to stay at home by prohibiting people from leaving the place where they live except for very limited purposes (such as shopping for basic necessities, exercise, to seek medical assistance or to provide care or assistance) and banning public gatherings of more than two people.
- 7.3 The Prime Minister addressed the nation on 25th May 2020 to announce that some of these restrictions would be relaxed. Since 1st June outdoor markets and car show rooms have been able to reopen, subject to all premises being made COVID-secure. He also announced that from 15th June, all other non-essential retail premises, ranging from department stores to small, independent shops, are able to reopen. Again, reopening will only be permitted for those retail premises which are COVID-secure.
- 7.4 The public transport network is vital to a safe relaxation of restrictions. While face coverings are not a substitute for distancing and hand hygiene, they can offer some limited protection to others, particularly where distancing is difficult to manage. Social distancing is likely to be increasingly difficult to manage at all times on public transport as restrictions are relaxed and demand for transport services increases. Mandating the use of face coverings, 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 government’s Chief Scientific Advisor has, for example, noted that face coverings would offer some benefit in crowded transport environments, such as the London Underground: “SAGE advised the use of face coverings in crowded situations (particularly indoor environments) where distancing is not possible. The tube is an environment in which people are potentially crowded for more than 15min and in which temporary use of face coverings would be supported. To get to higher levels of use some form of mandating is certainly one way to achieve that goal, but that is a policy choice for ministers. I would support higher use on the tube in line with SAGE advice.”

- 7.6 On 4th June, the Secretary of State for Transport set out the Government's determination to protect passengers by making face coverings mandatory on public transport.
- 7.7 The Department will work with operators to ensure widespread communication around the need to wear face coverings on public transport, and to set out the clear exemptions from the need to wear them for particular individuals. The Department expects widespread participation by the public, the majority of whom are in favour of this policy initiative, and who we expect to be willing to wear face coverings to help protect others.
- 7.8 The Regulations provide powers to transport operators to deny access to someone to a service if they are not wearing a face covering, or to direct them to leave a service if they do not wear a face covering when asked to. Operators have discretion over whether they choose to use these powers; they do not have an obligation to do so.
- 7.9 Exemptions from this policy exist for passengers with a "reasonable excuse" for not wearing a face covering. A non-exhaustive list of circumstances in which a person has a reasonable excuse is set out in regulation 4, and generally relate to medical and equalities grounds. As with the wider coronavirus restrictions an authorised person is expected to use their discretion and judgement when considering reasonable excuses and exemptions in the circumstances.
- 7.10 The 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.
- 7.11 We note that there are other global precedents for this action with other European countries having mandated the use of face coverings on transport. 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 in relation to Covid-19 at www.gov.uk/coronavirus and this guidance will be updated to include information on what constitutes a suitable face covering and the wearing of face coverings on public transport as required under these Regulations.
- 11.2 The Department for Transport has published guidance for operators and passengers on travelling safely during the Covid-19 outbreak. This guidance was updated on 14th June to include information on this new regulation.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is expected to be neutral to marginally positive. The policy will come into effect alongside the reopening of non-essential retail premises. Mandating the wearing of face coverings will help improve the safety of the public transport network, and we assume that this will provide greater confidence to the public to use it. We consider this will benefit business as people will be more likely to use the public transport network and will be more likely to travel to shop.
- 12.2 The Department has considered the fact that some people may be deterred from traveling due to them being required to wear a face covering either because they cannot source a suitable face covering or they have protected characteristics (e.g. a disability) which makes it difficult to wear a face covering. The definition of face covering used is broad and includes using a scarf or bandana. As such, the Department considers that it will not be prohibitively costly or difficult for people to obtain a suitable face covering. The Department has also included a range of exemptions to ensure 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 this measure will be in place for 12 months.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

- 14.1 A review clause is included in the instrument, requiring a review of the need for the requirements imposed by the Regulations at least every 6 months.
- 14.2 The instrument ceases to have effect at the end of the period of 12 months, beginning on the day on which it comes into force.

15. Contact

- 15.1 Conrad Bailey, Director – Coronavirus Response at the Department for Transport - Telephone: 07966 511823 or email: conrad.bailey@dft.gov.uk - can be contacted with any queries regarding the instrument.
- 15.2 Iain Forbes, Deputy Director – Coronavirus Response at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Grant Shapps MP, Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.