

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, WEARING OF FACE COVERINGS IN A RELEVANT PLACE) (ENGLAND) REGULATIONS 2020

2020 No. 791

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. The instrument makes this provision by requiring members of the public to wear face coverings whilst inside shops, shopping centres and transports hubs in England, except in limited cases.

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 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 Regulations came into force on 24th July 2020 and are published on www.legislation.gov.uk. The 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 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 Health and Social Care, Matt Hancock MP, has made the following statement regarding Human Rights:

“In my view the provisions of The Health Protection (Coronavirus, Wearing of Face Covering in a Relevant Place) 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 members of the public to wear a face covering when in a “relevant place”. A relevant place means a shop, as defined in regulation 2(2) or a transport hub.
- 6.5 This includes shops, supermarkets and enclosed shopping centres, but does not include restaurants which provide table service to customers, bars or pubs, or areas of shops and shopping centres which are provided for the consumption of food and drink, such as seating areas provided in coffee shops, supermarket cafes, and food court areas in shopping centres.
- 6.6 It also requires members of the public to wear a face covering when they are in enclosed parts of a transport hub i.e. any enclosed part of premises used as a station, terminal, port or other similar premises from or to which a public transport service operates. A public transport service has the same meaning as described in the EM to the Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020 (S.I. 2020/592).
- 6.7 There are also a number of premises which are excluded from the definition of a shop and are therefore not included. These are listed in Part 2 of the Schedule.
- 6.8 Regulation 3(1) requires a person to wear a face covering, unless they have a “reasonable excuse”. Regulation 3(2) sets out the categories of people to whom the requirement to wear a face covering does not apply, including children under the age of 11 and shop employees acting in the course of their employment.

- 6.9 Regulation 4 provides a non-exhaustive list of what may constitute a “reasonable excuse” for the purposes of regulation 3(1).
- 6.10 Regulation 5 permits a relevant person, namely a police constable, a police community support officer, or a TfL officer in any transport hub from or to which a TfL public transport service is provided, to deny a person entry to the relevant place, direct members of the public to wear a face covering, or to leave the relevant place if they are not wearing a face covering. Where a person fails to comply with the direction, a constable may remove them from the relevant place, and may use reasonable force if necessary to exercise this power under regulation 5(4).
- 6.11 The instrument includes provision that a person who contravenes the requirement in regulation 3(1) to wear a face covering or fails to comply with a direction under regulation 5 commits an offence, punishable by a fine.
- 6.12 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 5(9): a constable, police community support officer, or a TfL officer in relation to any transport hub from or to which a TfL public transport service is provided. 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 (S.I. 2020/350) 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. Furthermore, from 15th June, all other non-essential retail premises, ranging from department stores to small, independent shops, were able to reopen, subject to being COVID-secure.
- 7.4 As the retail sector has reopened and footfall is increasing, the policy aim is to give members of the public more confidence to shop safely and enhance protections for those who work in shops. Since 11th May, the Government has already been advising 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. On 14th July the Government announced that the wearing of face coverings will be mandatory in shops and supermarkets in England from July 24th. Face coverings have already been mandatory on public transport in England since June 15th. While face coverings are not a substitute for distancing and hand hygiene, there is some evidence to suggest that when used correctly, face coverings may have some benefit in reducing the likelihood of those with the infection passing it on to others, particularly if they are asymptomatic. Similarly, as more people start to use transport hubs which often include retail spaces, we want to enhance protection in transport hubs and provide clarity on when people need to wear face coverings.

- 7.5 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 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 in shops, supermarkets, enclosed shopping centres and transport hubs, 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. These Regulations do not apply to those working in shops, supermarkets and other places where these Regulations apply.
- 7.6 Exemptions from this requirement exist for members of the public 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. These mirror the list in regulation 4 of the Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020 (S.I. 2020/592) except that there is no reasonable excuse to remove a face covering to eat or drink when inside a shop. As with the wider coronavirus restrictions, a relevant or an authorised person is expected to use their discretion and judgement when considering reasonable excuses and exemptions in the circumstances. Nobody who has a reasonable excuse as set out in regulation 4 and is therefore not wearing a face covering should be prevented from visiting a shop or supermarket or other setting covered by these Regulations. Further information on this is available in the relevant Guidance published on GOV.UK.
- 7.7 If a person who is required to, is not wearing a face covering and does not have a reasonable excuse as outlined in regulation 4, then a relevant person as defined in regulation 5(9) can deny that person entry to a relevant place, direct that person to wear a face covering and may direct that person to leave the premises. A police constable can also remove someone from the premises, using reasonable force if necessary. Under regulation 7 a fixed penalty notice may also be issued to a person aged 18 or over, if it is reasonably believed that an offence under these Regulations is committed.
- 7.8 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.

7.9 We note that there are other global precedents for this action with other European countries having mandated the use of face coverings in indoor settings such as shops and supermarkets. 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 these regulations apply and those who will be exempt from these regulations.

12. Impact

12.1 The impact on business, charities or voluntary bodies is expected to be positive. Mandating face coverings in shops and supermarket 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 considered the fact that some people may be deterred from visiting the relevant settings where these Regulations apply 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 any covering that covers the mouth and nose. 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. Furthermore, the policy will be supported by a communications campaign that will make clear that some people are exempt from these regulations and people should not be challenged by members of the public for not wearing a face covering.

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 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 Sarah Browne at the Department for Health and Social Care, Sarah.Browne@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 The Rt Hon Matt Hancock MP, at the Department for Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.