

**EXPLANATORY MEMORANDUM TO**

**THE HEALTH PROTECTION (CORONAVIRUS, WEARING OF FACE COVERINGS IN A RELEVANT PLACE AND ON PUBLIC TRANSPORT) (ENGLAND) (AMENDMENT) REGULATIONS 2020**

**2020 No. 906**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Health and Social Care and 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 The instrument makes provision to amend the penalty amounts for fixed penalty notices issued under legislation governing the wearing of face coverings on public transport and in relevant places. The new structure discourages repeat offending by increasing the penalty amount for multiple offences.

**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 28 August 2020 and are published on [www.legislation.gov.uk](http://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, both the Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020 (“the Public Transport Regulations”) and the Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020 (“the Relevant Place Regulations”), which the instrument amends, 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 the instrument is England and Wales.

4.2 The territorial application of the 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 Coverings in a Relevant Place and on Public Transport) (England) (Amendment) Regulations 2020 are compatible with the Convention rights.”

## **6. Legislative Context**

6.1 The Public Transport Regulations and the Relevant Place Regulations (collectively “the Face Coverings Regulations”), came into force on 15th June 2020 and 24th July 2020 respectively.

6.2 The Face Coverings Regulations were made under 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”), which provide 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.

6.3 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 outside England and Wales.

6.4 The 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. The instrument is part of a wider set of measures introduced to respond to those health risks.

6.5 The Face Coverings Regulations provided that a fixed penalty notice (“FPN”), a notice which enables a person to discharge their liability to criminal conviction, may be issued by authorised persons (a constable, police community support officer, a Transport for London officer, or a person designated by the Secretary of State for the purposes of the regulations, such as an operator of a public transport service).

6.6 This new instrument amends the penalty structure in the Face Coverings Regulations.

## **7. Policy background**

### *What is being done and why?*

7.1 Since the introduction of the Face Coverings Regulations, compliance has varied between settings. On public transport, data suggest that while compliance in England is relatively high (between 82 and 94 per cent according to ONS survey data in July-August 2020), in some areas and at some times, the observed compliance is lower. In relevant places (as that term is defined in the Relevant Place Regulations), ONS reported compliance rates ranged between 74 and 97 per cent since the Relevant Place Regulations came into force on 24th July 2020.

- 7.2 Wearing a face covering may provide some reduction in transmission risks of Covid-19 in crowded indoor settings where other mitigations, particularly social distancing, may be difficult to manage. Consistent use of face coverings by individuals who are not exempt is therefore an important part of controlling the virus. Exemptions from this policy exist for individuals 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 both Face Coverings Regulations, 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.
- 7.3 On public transport, the Department for Transport has pursued a gradual ramp up of the enforcement since the introduction of the regulations giving the public time to get used to the requirement. The police and the Transport for London have also pursued a 6-step approach to enforcement, using penalties as a last resort.
- 7.4 While the majority of the public have complied with the regulations, a minority have not. On transport, between 15th June and 20th August 2020 there have been 115,423 interventions to remind passengers to wear face coverings. As of 20th August 2020, Transport for London and the police have issued at least 365 FPNs. 8 FPNs have been issued under the Relevant Place Regulations.
- 7.5 On 13th August 2020, the Government announced that it was strengthening the penalty system for the Face Coverings Regulations to further discourage non-compliance, in particular repeat offending.
- 7.6 The new approach will retain the initial £100 FPN amount for the first offence (reduced to £50 if paid within 14 days). However, for each additional breach of the Face Coverings Regulations – across both public transport and relevant places – the FPN amount will now double, to a maximum of £3,200. This is known as ‘laddering’.
- 7.7 FPNs issued before this approach is implemented will not be ‘laddered’. However, previous offences will be taken account of where an individual is caught committing an offence under the Face Coverings Regulations. If, however, a person has received an FPN (or FPNs) before 28th August 2020, the first FPN issued after 28th August 2020 will be for £200 and each subsequent FPN will double in value, up to a maximum of £3,200. All subsequent FPNs issued after the £3,200 limit has been reached will be levied at £3,200. Discounts for early payment will not apply from FPNs issued for £200 and above.
- 7.8 The amended penalty approach therefore strengthens the protection of public health, within the overall aims of the 1984 Act to protect the public from threats arising from infectious disease or contamination from chemicals or radiation.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 The 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 the instrument.

## **11. Guidance**

11.1 The Government has published guidance in relation to Covid-19 at [www.gov.uk/coronavirus](http://www.gov.uk/coronavirus) and this guidance will include updated information about the penalty structure for non-compliance with the Face Coverings Regulations.

## **12. Impact**

12.1 The impact on business, charities or voluntary bodies is expected to be neutral to marginally positive. Increasing face covering usage compliance will improve the safety of the public transport system and relevant places. We assume this will increase public confidence to use these places, benefitting the economy (through increased takings), the environment (through reduced car use) and society (through encouraging people to get out of their houses in a way that controls the spread of the virus).

12.2 We have considered the fact that increased penalties could disproportionately impact certain groups that fail to comply with the Face Coverings Regulations. The police and Transport for London are closely monitoring demographic and other equalities data where available to identify any potential issues.

## **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 The instrument ceases to have effect when the Face Coverings Regulations to which it refers cease to have effect.

14.2 Both Face Coverings Regulations have review clauses at six months – the penalty structure will form part of that review process.

## **15. Contact**

15.1 Sarah Browne at the Department for Health and Social Care, [Sarah.Browne@dhsc.gov.uk](mailto: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.