

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, WEARING OF FACE
COVERINGS) (ENGLAND) REGULATIONS 2021

2021 No. 1340

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (“DHSC”) 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 indoors in a number of relevant places including whilst inside certain indoor settings including shops, shopping centres, banks, transport hubs, and when using public transport services, 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) and the Omicron variant of concern (B.1.1.529).
- 3.2 The Regulations came into force at 4am on 30 November 2021 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. The Regulations will expire at the end of 20 December 2021.

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 Maggie Throup, The Parliamentary under Secretary of State for Vaccines and Public Health, has made the following statement regarding Human Rights:

“In my view the provisions of The Health Protection (Coronavirus, Wearing of Face Coverings) Regulations 2021 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”), provides a legal basis for protecting the public from threats arising from infectious disease or contamination, and includes powers to impose restrictions or requirements on people, and in relation to things and premises. Overall, the 1984 Act sets out a framework for health protection which permits 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. The threat can come from outside the country.
- 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 and the Omicron variant of concern (B.1.1.529).
- 6.4 The Health Protection (Coronavirus, Wearing of Face Covering)(England) Regulations 2021 (the “Face Covering Regulations”) require people to wear a face covering when indoors on a “public transport service”, or in a “relevant place” including a “transport hub” or in any part of a “transport hub” which is indoors. A “relevant place” includes shops, shopping centres, banks, building societies and post offices as set out in Part 1 of Schedule 1. It also includes transport hubs. “Relevant place”, “public transport service”, “public transport vehicle” and “transport hub” are defined in regulation 2.
- 6.5 People are required to wear a face covering indoors when using a public transport service. This includes on buses, trains, private hire vehicles, taxis, the London Underground, trams, aircraft and water taxis. It does not include school transport that is being used solely for that purpose, or cruise ships.
- 6.6 People are required to wear a face covering when they are in a transport hub, which is any premises used as a place from or to which a public transport service operates. The requirement only applies to areas that are indoors and open to the public.
- 6.7 Face coverings are not required in other places, including hospitality settings. Places that could fall within the definition of a “shop” but where face coverings are not required are listed in Part 2 of Schedule 1.
- 6.8 Regulation 3(1) sets out the requirement to wear a face covering in a relevant place. Regulation 4(1) requires a person to wear a face covering on public transport. In both cases, the requirement is subject to any reasonable excuse that the person has for not wearing one. Regulations 3(2) and 4(3) set 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 employees of the person responsible for a relevant place or an operator of a public transport service acting in the course of their employment.

- 6.9 Regulation 5 provides a non-exhaustive list of what may constitute a “reasonable excuse” for the purposes of regulations 3(1) and 4(1).
- 6.10 Regulation 6 requires a responsible person to display a notice in a relevant place or public transport vehicle stating that any person present in that setting is required to wear a face covering unless exempt. Alternatively, the responsible person may take other measures to ensure that people entering a relevant place or boarding a public transport vehicle are given this information (e.g. an announcement over the public address system).
- 6.11 Regulation 7 requires that anyone who is required to wear a face covering in a relevant place must not be prevented from doing so by anyone responsible for that setting.
- 6.12 Regulation 8 allows the Secretary of State to disapply regulation 3(1) the requirement to wear a face covering or regulation 6(1) the requirement to display a notice for the purposes of a research programme.
- 6.13 The instrument includes provision that a person who contravenes the requirement in regulations 3, 4, 6, 7(1), 9(2)(4)(7) to wear a face covering or fails to comply with a direction under regulation 9 commits an offence, punishable on summary conviction by a fine.
- 6.14 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 11 (9) as: a constable, police community support officer, a TfL officer, or a person designated by the Secretary of State. The fixed penalty notice may be issued to a person over 18 whom the authorised person reasonably believes to have committed an offence under the Regulations. The amount of the fixed penalty is £200, reduced to £100 if paid within 14 days of a notice being issued. If somebody is issued with their second fixed penalty notice, the amount due is £400, and doubles with each subsequent fixed penalty notice to a maximum sixth fixed penalty notice amount of £6,400. The amount payable for the second or any subsequent fixed penalty notice is not reduced if paid within 14 days of the fixed penalty 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 On 14th September, the Government published the ‘COVID-19 Response: Autumn and Winter Plan’. The Plan set out the Government’s approach to sustaining progress made in fighting the virus and returning to normal, while also ensuring the NHS would not come under unsustainable pressure. During the week commencing 22 November 2021 the UK Government became aware of a new coronavirus variant of concern subsequently labelled Omicron by the World Health Organisation. There is concern that the mutations this variant carries may result in increased transmission and/or result in reduced vaccine efficacy, though due to the emerging nature of this issue, the extent to which these are the case is not yet clear. As a result, the

Government has, as a precaution, implemented a range of targeted and proportionate measures to reduce transmission whilst the Omicron variant is investigated, one of which is to reintroduce the mandatory wearing of face coverings in shops and on public transport.

- 7.3 Whilst the Omicron variant is under investigation, the Government continues to strongly encourage people to get vaccinated, and for those people more vulnerable to the virus, to get their booster vaccine. The experience with current variants is that vaccinated people are less likely to be infected, and thus are less likely to spread the virus. Face coverings are a useful measure to reduce transmission, in addition to vaccination.
- 7.4 The Government is mandating the wearing of face coverings in shops as well as on public transport services and in public transport hubs. This is due to the potential risk posed by this emerging variant of coronavirus. Evidence demonstrates that face coverings are effective, when worn correctly, at reducing virus transmission. This, in turn, will reduce the number of people requiring hospital treatment for the virus.
- 7.5 SAGE has advised that face coverings are likely to reduce transmission of the virus by partially reducing peoples' exposure to virus-carrying droplets. Mandating the use of face coverings in indoor public settings as listed in Schedule 1, Part 1, as well as in transport hubs, and on public transport, offers a reasonable protective measure to reduce the risk of infection on contamination by a virus that presents a significant harm to public health. SAGE also advised that mandating the use of face coverings is likely to increase usage.
- 7.6 People will not be required to wear face coverings in any other settings, including hospitality settings. This will encompass settings such as pubs, bars, and restaurants.
- 7.7 These settings are excluded because mandating face coverings in hospitality settings would be impractical and would be likely to have a high negative economic and social impact. Face coverings are most effective when properly used and correctly fitted. Loss of inhibition from alcohol consumption is likely to lead to people not wearing them correctly, and indeed when face coverings are constantly removed (to eat and drink, or dance in a hospitality setting) their effectiveness declines even further.
- 7.8 A person is not required to wear a face covering if they have a "reasonable excuse" for not wearing a face covering. Transport workers are exempt from having to wear face coverings. A non-exhaustive list of circumstances in which a person has a reasonable excuse is set out in regulation 5, and includes an inability to wear a face covering because of medical reasons or disability, to avoid the risk of harm or injury, or for eating and drinking or taking medication. Nobody who has a reasonable excuse and is therefore not wearing a face covering should be prevented from visiting any setting because of the requirements in these Regulations. Furthermore, people do not need to show proof of this reasonable excuse under the Regulations. Further information on this is available in the relevant guidance published on GOV.UK.
- 7.9 If a person who is required to, is not wearing a face covering and does not have a reasonable excuse, then a relevant person (which includes a constable, policy community support officer, TfL officer, or transport operator, as defined at regulation 9(12)) can deny that person entry, direct that person to wear a face covering and may direct that person to leave. A police constable can also remove someone from the premises, using reasonable force if necessary.

7.10 The Regulations therefore support the overall aims of the 1984 Act to protect the public from threats arising from infectious disease.

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 Mandating face coverings in shops and on public transport and in transport hubs may give members of the public confidence to visit and use these premises despite the emergence of this new variant which may support visitors to these settings, bringing benefit to the business.

12.2 The policy may also offer added protection to employees working in settings where face coverings are required for all, in addition to any other mitigations that have been put in place by businesses already. Government guidance to businesses will communicate the legal requirement that they must not seek to prevent staff from wearing a face covering if they choose to.

12.3 The Department has considered the fact that some people may be deterred from visiting the 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 securely 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. This Regulation requires people to wear face coverings in many of the same places that they were required under previous regulations. Compliance with regulations was high, and most people are familiar with the requirement.

- 12.4 There is no significant impact on the public sector.
- 12.5 An Impact Assessment has not been prepared for this instrument because this measure will be in place for less than 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 No review clause is included in the instrument.
- 14.2 The instrument ceases to have effect at the end of 20 December 2021.

15. Contact

- 15.1 PPE Briefing team at the Department of Health and Social Care, facecoveringsregulations@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 of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Maggie Throup, the Parliamentary under Secretary of State for Vaccines and Public Health, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.