

**EXPLANATORY MEMORANDUM TO**  
**THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (ALL TIERS**  
**AND SELF-ISOLATION) (ENGLAND) (AMENDMENT) REGULATIONS 2021**

**2021 No. 97**

**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 amends the Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 (S.I. 2020/1045) (the “Self-Isolation Regulations”) and the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 (S.I. 2020/1374) (the “All Tiers” Regulations).
- 2.2 The Self-Isolation Regulations impose certain requirements on individuals to self-isolate where they are notified by one of the bodies specified in those Regulations that they have tested positive for coronavirus or have been in close contact with such a person. This is in order to manage the public health risk posed by the spread of severe acute respiratory syndrome Coronavirus 2 (SARS-CoV-2) which causes the disease Covid-19.
- 2.3 In respect of the Self-Isolation Regulations, this instrument amends the provisions regarding what information may be disclosed pursuant to those Regulations. These amendments are justified for the purposes of public health protection and law enforcement. This instrument also corrects a number of errors.
- 2.4 In respect of the All Tiers Regulations this instrument introduces a new fixed penalty notice for attending a gathering of more than 15 people that takes place in a private dwelling, educational accommodation or as an indoor rave. This instrument also amends the Secretary of State’s power to designate the prosecuting authority in the All Tiers Regulations so that a designation can be made in relation to offences committed under a number of specified Regulations related to Covid-19.

**3. Matters of special interest to Parliament**

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

- 3.1 This instrument is made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22). This instrument is 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 this instrument without a draft being so laid and approved.
- 3.2 We are at a critical point in the Coronavirus pandemic, with daily infection and death rates at a peak. Whilst vaccinations are being rolled out, there are a number of more transmissible variants of the virus now in circulation which require tougher and stricter

measures. Ensuring that infected individuals and their close contacts self-isolate is one of the most powerful tools for controlling transmission of Covid-19.

- 3.3 We have been working with the police on the enforcement of self-isolation, and it has become clear that changes around data sharing are necessary to strengthen the effectiveness of the current system. The additional data sharing provisions entailed in this amendment provide the police with the information they need to enforce provisions. It is necessary for the police to be able to carry out their responsibilities under the Self-Isolation Regulations efficiently and speedily to deter people from breaching self-isolation and increase compliance at a time when adherence to self-isolation is crucial.
- 3.4 Therefore, the urgency of this amendment stems from the critical national situation, the necessity of the police being able to conduct their duties efficiently in this context, and the essential impact this should have on improving compliance with self-isolation and bringing down the ‘R’ rate of transmission.
- 3.5 Although the majority of people are following Covid regulations, it is important the police and local authorities are able to take appropriate action against people who are not following the rules. The amendment to the All Tiers Regulations to introduce a new Fixed Penalty Notice (“FPN”) (a notice which enables a person to discharge their liability to criminal conviction) for attending certain gatherings of more than 15 people will result in people who attend larger gatherings receiving a larger penalty, to represent the greater risk that these larger gathering pose. This will support wider efforts to improve compliance and thereby bring down the ‘R’ rate of transmission.
- 3.6 On 30 September 2020 the Secretary of State made a commitment to the House of Commons that wherever possible for significant national measures with effect in the whole of England or UK-wide, votes would be held before such regulations come into force (Hansard cols. 288-289). Owing to the speed with which the Government must take this emergency action to control the virus and save lives it is not possible for a debate to be held before these regulations come into force.
- 3.7 This instrument was made on 28 January 2021 and will come into force on 29 January 2021 and be published on [www.legislation.gov.uk](http://www.legislation.gov.uk). This instrument ceases to have effect at the end of the period of 28 calendar days beginning with the day on which it is made unless, during that period, this instrument is approved by a resolution of each House of Parliament.

*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)*

- 3.8 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, Restrictions) (All Tiers and Self-Isolation) (England) (Amendment) Regulations 2021 are compatible with the Convention rights”.

## **6. Legislative Context**

- 6.1 The Public Health (Control of Disease) Act 1984 (“the 1984 Act”) and regulations made under it provide a legislative framework for health protection in England and Wales.
- 6.2 Part 2A of the 1984 Act, as inserted by the Health and Social Care Act 2008 (“the 2008 Act”), provides a legal basis to protect 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. Overall, the amended 1984 Act sets out a framework for health protection which requires much 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 infection or contamination can come from inside or outside England and Wales.
- 6.4 A number of regulations under section 45C of the 1984 Act have been made, including regulations relating to severe acute respiratory syndrome Coronavirus 2 (SARSCoV-2).
- 6.5 In accordance with section 45R of the 1984 Act, the Secretary of State is of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, each House of Parliament.
- 6.6 The Secretary of State in making these Regulations considers that they are a proportionate response to the threats of Coronavirus transmission that will help improve public health and achieve the goal of reducing the risks posed by Covid-19.
- 6.7 Regulation 1 of this instrument details the point at which this instrument will come into force: 1700 29 January 2021.
- 6.8 Regulation 2 specifies the changes to the All Tiers Regulations to introduce a new fixed penalty for gatherings of over 15 people which take place in a private dwelling, in educational accommodation or as an indoor rave. It outlines that the first penalty is £800, reducing to £400 with early payment. With subsequent offences doubling the size of the FPN to a maximum of £6,400.
- 6.9 Regulation 2 also makes a minor change to Schedule 1 to the All Tiers Regulations to clarify that the Tier 1 gatherings restrictions do not permit a person to gather in a Tier 1 area in contravention of paragraph 3(2) or 4(2) of Schedule 3A (the restrictions on a person living in a Tier 4 area gathering outside that area).
- 6.10 Regulation 2(3) makes an amendment to regulation 13 of the All Tiers Regulations to give the Secretary of State a power to designate the prosecuting authority in relation to offences committed under a number of specified Regulations related to Covid-19. Regulation 2(5) inserts a new Schedule 6 into the All Tiers Regulations, specifying the Regulations to which this power to designate the prosecuting authority applies.
- 6.11 Regulation 3 makes an amendment to regulation 14(8A) sub-paragraph (g) of The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 (the “No. 3 Regulations”), as it relates to the All-Tiers Regulations, to clarify that the number

of fixed penalty notices issued under the large gathering's offence should not be taken into account when determining the fixed penalty notices under the No. 3 Regulations

- 6.12 Regulation 4(2) and (3) correct a number of errors in The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020
- 6.13 Regulation 4(4) of this instrument amends regulation 14 of the Self-Isolation Regulations. This sets out the power to use and disclose 'relevant information'. In particular, this regulation permits the following additional information to be shared:
- the notified individual's date of birth;
  - the means by which the notified individual was notified to self-isolate;
  - the postal address, telephone number or email address used (as the case may be);
  - whether the individual is participating in coronavirus related research; and
  - "notification information" which is whether an individual was notified to self-isolate due to receiving a positive test or due to being identified as a close contact, as well as a copy of the notification given (which may also contain this information though there is a provision to disclose it without).
- 6.14 Regulation 4(4) also specifies the limits to using and sharing 'notification information', making clear that sharing this information can only be done for the prevention, investigation, detection or prosecution of offences under the Self-Isolation Regulations.

## **7. Policy background**

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

#### *Amendment to the Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 (S.I. 2020/1045)*

- 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. Since the 2008 Act came into force, the criterion for action has been based on the potential of an infection or contamination to present significant harm to humans, rather than on specific infectious diseases.
- 7.2 Ensuring that infected individuals and their close contacts self-isolate is one of the most powerful tools for controlling transmission of Covid-19. Increasing compliance with self-isolation will reduce transmission of the virus, preventing family and friends from contracting coronavirus and protecting the NHS.
- 7.3 The Self-Isolation Regulations first came into force on 28 September 2020. These make self-isolation a legal requirement for individuals who have been notified by the bodies specified in the regulations (in practice, NHS Test and Trace), that they have tested positive for Covid-19 or have had close contact with a person who has tested positive. Non-adherence to the Regulations can result in a FPN ranging from £1,000 to £10,000. Failure to pay the FPN can result in court action and conviction. The Self-Isolation Regulations are a necessary and valuable part of the Government's Coronavirus response, seeking to reduce transmission of the virus, save lives and protect the NHS.
- 7.4 Feedback from policing suggests additional data is needed to aid the effective and efficient enforcement of provisions. Specifically, the police need to: verify the identity

of the individual concerned to establish that they were under a legal duty to self-isolate and why; and to establish that the individual was notified of the legal duty and received this notification.

- 7.5 The data sharing amendment in Regulation 4(4) will permit the following additional information to be shared in order to meet these requirements:
- the notified individual's date of birth;
  - the means by which the notified individual was notified to self-isolate;
  - the postal address, telephone number or email address used;
  - whether the individual is participating in coronavirus related research; and
  - "notification information" which is whether an individual is supposed to be self-isolating due to receiving a positive test or due to being identified as a close contact, as well as a copy of the notification (which also contains this information).
- 7.6 The addition of date of birth and email address, and the means by which an individual was notified together with the actual contact details used, to information that can be shared to the police will strengthen the evidential base. This will enable the identity of the individual suspected of having breached the requirements in the Self-Isolation Regulations to be more easily verified and ensure they have been notified of their legal duty.
- 7.7 Information on whether the individual is participating in coronavirus related research will be used to determine whether the individual who is suspected to have breached the self-isolation requirement has done so under an exemption in the Self-Isolation Regulations.
- 7.8 The 'notification information' consists of a copy of the notification and whether the person is under a duty to self-isolate as a positive case or because they are identified as a close contact of such a person. In fact, the notification itself contains details as to the legal basis for the duty to self-isolate (though there is also a provision to redact this information if not required). It will be used to confirm that the individual did receive a notification to self-isolate and confirm that they were aware of their duty to do so. The police will now be in a position to provide a copy of the notification to the person. If they claim not to be aware of the requirements for them to self-isolate, this copy will be used to remind the individual of their legal duty.
- 7.9 In addition, information about whether someone is a positive case or a contact may need to be shared with the police. To carry out effective enforcement, the police need to distinguish between the two types of cases as any breaches – and their related circumstances – may need to be evidenced by the police in criminal proceedings. It is therefore crucial that the police know the precise circumstances and chain of events that may need to be investigated and evidenced in each individual case. Sharing this additional information is therefore both necessary and proportionate in order to give the police the information they need to effectively enforce the law.
- 7.10 Given the need to ensure appropriate safeguards around additional data sharing, particularly of the notification information, the Self-Isolation Regulations make clear that this data may only be disclosed in limited circumstances for carrying out certain functions under the Regulations and cannot be further shared other than in the limited circumstances provided. In particular, this applies where the person receiving the notification information needs it for the purposes of carrying out an enforcement

function under the Self-Isolation Regulations or otherwise for the purpose of prevention, investigation, detection or prosecution of offences under the Self-Isolation Regulations. That person may only use the notification information for these purposes and may only disclose it further where that additional recipient needs it for these purposes. This ensures that disclosure is only where it is strictly for enforcement purposes and where it is proportionate. This is in line with line with Article 8 European Convention of Human Right and Data Protection Act 2018 requirements.

- 7.11 Above all else, the Self-Isolation Regulations are a safety measure designed to drive up compliance with self-isolation for those most at risk from spreading the virus. Any improvement to the way these Regulations are upheld should have a positive impact on the public health of the country as a whole by bringing down rates of transmission, protecting those most at risk, reducing pressures on healthcare and aiding a return to normality for all.

*Amendment to the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 (SI 2020/1374)*

- 7.12 This instrument also introduces a new higher FPN to be issued by authorised persons (constable, police community support officer) to persons aged 18 and over whom they reasonably believe have committed a larger gathering offence. A large gathering offence is defined as an offence under regulation 10(1)(a) of contravening a gathering restriction, where their contravention consists of participating in a gathering of more than 15 people that takes place in a private dwelling, educational accommodation or as an indoor rave. The amount of the first fixed penalty is £800, reduced to £400 if it is paid within 14 days. The value of the FPN doubles on each successive offence to a maximum of £6,400.
- 7.13 This addresses the gap found in previous Covid regulations where there was no enhanced penalty for attending a larger unlawful gathering, other than the £200 FPN for breaching social contact and gathering rules. Although the majority of people are following Covid regulations, it is important the police are able to take appropriate action against people who are committing more serious breaches of the regulations.
- 7.14 This instrument also clarifies that gatherings in a Tier 1 area cannot take place if one of the participants is from a Tier 4 area, and the gathering is not compliant with the rules for someone in a Tier 4 area. This is to correct an omission in previous drafting.
- 7.15 This instrument also amends the Secretary of State's power to designate the prosecuting authority in the All-Tiers Regulations so that a designation can be made in relation to offences committed under a number of specified Regulations related to Covid-19. This addresses a gap in the Self-Isolation Regulations and the Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020 (SI 2020/1005) where there is no current power to designate the prosecuting authority, and also makes clear the designation power exists in relation to the other specified Regulations following their revocation. The power to designate means that prosecutions can be brought by, for example, the police or other designated authority as well as the Crown Prosecution Service, which will allow for the efficient prosecution of offences.

**8. European Union (Withdrawal) Act 2018/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 2018.

**9. Consolidation**

- 9.1 This instrument does not consolidate any legislation.

**10. Consultation outcome**

- 10.1 There has been no public consultation in relation to this instrument, but the intention to make this instrument has been shared with stakeholders.

**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 information in relation to the new self-isolation periods.

**12. Impact**

- 12.1 This instrument is a temporary provision as part of the Government's response to Covid-19.
- 12.2 The Self-Isolation Regulations and the All Tiers Regulations, which this instrument amends, will be reviewed 6 months after they came into force and will expire 12 months after they came into force.

**13. Regulating small business**

- 13.1 This instrument applies to activities that are undertaken by small businesses.

**14. Monitoring & review**

- 14.1 The Self-Isolation Regulations, which this instrument amends, will be reviewed 6 months after they came into force and will cease to have effect at the end of the period of 12 months after the Self-Isolation Regulations came into force. The All Tiers Regulations, which this instrument also amends, will be reviewed every 28 days.

**15. Contact**

- 15.1 Holly Viles at the Department of Health and Social Care [contacttracingpolicy@dhsc.gov.uk](mailto:contacttracingpolicy@dhsc.gov.uk) can be contacted with any queries regarding this instrument.
- 15.2 Ben Dyson at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.
- 15.3 Matt Hancock MP, Secretary of State for Health at the Department of Health and Social Care, can confirm that this explanatory memorandum meets the required standard.