

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (SELF-ISOLATION ETC.) (REVOCATION) (ENGLAND) REGULATIONS 2022

2022 No. 161

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 revokes:
- The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 (S.I. 2020/1045) (the "Self-Isolation Regulations"); and
 - The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 (S.I. 2020/750) (the "No. 3 Regulations")
- 2.2 The Self-Isolation Regulations impose a legal duty to self-isolate on people who are notified as a positive case of Covid-19 or non-exempt close contact of a positive case, along with a requirement to provide NHS Test and Trace with details of household contacts and notify an employer that they are required to self-isolate. The Self-Isolation Regulations also impose a legal duty on employers to not knowingly allow someone who is self-isolating to attend work.
- 2.3 The No. 3 Regulations provide local authorities with powers to impose prohibitions, requirements or restrictions on individual premises, events, or public outdoor places, provided that strict legal tests are satisfied. Both the Self-Isolation Regulations and the No. 3 Regulations have an expiry date of 24 March 2022.

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) ("the 1984 Act"). This instrument is made without a draft having been laid and approved by a resolution of each House of Parliament. Having formed the view that the restrictions are no longer necessary, the government is acting promptly to remove them. Therefore, 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 This instrument was laid on 22 February 2022 and published on www.legislation.gov.uk later that day. This instrument comes into force on 24 February 2022 and is subject to approval by both Houses.

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

“In my view the provisions of the Health Protection (Coronavirus, Restrictions) (Self-Isolation Etc.) (Revocation) (England) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

Background

6.1 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, provides a legal basis to protect the public from threats arising from infectious diseases, or contamination from chemicals or radiation. Part 2A 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 protections 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 threat of infection or contamination can come from 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) (“COVID-19”).

The Self-Isolation Regulations

6.5 The Self-Isolation Regulations which came into force on 28 September 2020 impose requirements on people who are notified of a legal obligation to self-isolate. This has played a key role in slowing or preventing a rise in the rate of reproduction (R) of COVID-19. That instrument required persons who have been notified that they have tested positive for coronavirus or have been identified, other than through the NHS COVID-19 app, as a close contact of someone who has tested positive, to self-isolate for a specified period.

6.6 The Self-Isolation Regulations have been amended several times throughout the course of the pandemic, including changes to the requirement to self-isolate as a close contact of a positive case with effect on 16 August 2021 and the extension of the Regulations for a further 6 months on 27 September 2021. In addition, on 9 December 2021, the Regulations were amended to align existing exemptions to self-isolate with those in the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 (S.I. 2021/58).

The No. 3 Regulations

6.7 The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 came into force on 18 July 2020. Those Regulations were introduced to provide local

authorities with powers to respond to serious and imminent threats as a result of COVID-19, without prior recourse to a magistrate's court. Those regulations were originally introduced for six months as temporary, emergency measures.

- 6.8 Throughout the course of the pandemic, those regulations were extended a number of times under emergency procedures, including:
- Extension for a further six months until 17 July 2021 by [The Health Protection \(Coronavirus, Restrictions\) \(No. 3\) and \(All Tiers\) \(England\) \(Amendment\) Regulations 2021 \(S.I. 2021/8\)](#), regulation 2(4).
 - A short term extension until 18 July 2021 to align existing COVID-19 regulations ahead of step 4 of the government's COVID-19 roadmap, by [The Health Protection \(Coronavirus, Restrictions\) \(Steps and Other Provisions\) \(England\) \(Amendment\) \(No. 2\) Regulations 2021 \(S.I. 2021/705\)](#), regulation 4(1).
 - An extension until 27 September 2021 by [The Health Protection \(Coronavirus, Restrictions\) \(Steps etc.\) \(England\) \(Revocation and Amendment\) Regulations 2021 \(S.I. 2021/848\)](#), regulation 4.
 - A final six month extension until 24 March 2022, by [The Health Protection \(Coronavirus, Restrictions\) \(Self-Isolation\) \(England\) \(Amendment\) \(No. 3\) Regulations 2021 \(S.I. 2021/1073\)](#), regulation 3.

Legislative changes

- 6.9 Regulation 1 of this instrument sets out the coming into force date of 24 February 2022.
- 6.10 Regulation 2 of this instrument revokes the Self-Isolation Regulations and the No. 3 Regulations.

7. Policy background

What is being done and why?

Revoking the Self-Isolation Regulations

- 7.1 The Self-Isolation Regulations came into force on 28 September 2020 and were based on public health advice around the risk posed by COVID-19 following an increase in the number of positive cases and the rate of transmission. This replaced public health guidance for those with COVID-19 or symptoms of COVID-19. The Self-Isolation Regulations played a vital and necessary role in breaking the chains of transmission. The success of the COVID-19 vaccination programme in offering good individual protection against severe illness, hospitalisation and death, as well as the availability of antiviral treatments, has enabled the Government's approach to managing COVID-19 to evolve. The Government is now closer to its goal of treating COVID-19 in a similar way to other infectious diseases. This means that it is no longer proportionate to set legal restrictions for how the public should act.
- 7.2 Recent data shows that hospitalisations and deaths in England are now significantly lower than the peak of the Omicron wave. At the peak of the pandemic in January 2021, daily hospital admissions reached 4,134.¹ Since the emergence of the Omicron variant, daily hospital admissions reached their highest total of 2,370 on 29 December 2021, and have since decreased to 1,029 as of 13 February 2022. During the previous

¹ [Healthcare in the UK | Coronavirus in the UK \(data.gov.uk\)](#)

waves, the number of patients in mechanical ventilation beds peaked at 2,881 on 12 April 2020, and 3,736 on 24 January 2021. During the latest wave, the highest daily total of patients in mechanical ventilation beds was 806 on 30 November 2021 and had decreased to 323 on 15 February 2022. Similarly, data² also shows a significant decrease in the number of deaths which occurred within 28 days of a positive Covid test in comparison to previous waves. During the January 2021 wave, the highest total daily deaths recorded by date of death was 1,307 on 16 January 2021. By comparison, the highest daily number of deaths recorded since the emergence of the Omicron variant was 276 on 17 January 2022, with the latest recorded figure, on 21 February 2022, being 214.

- 7.3 While there will no longer be a legal requirement to self-isolate, those who test positive for COVID-19 will receive guidance advising them to stay at home and avoid contact with others for at least five full days. Where individuals are unable to stay at home, the guidance will set out steps they can take to reduce the risk to others. Contacts of people with COVID-19 will be advised to take extra care when following general guidance for the public on safer behaviours rather than self-isolating or taking part in daily testing. This guidance will also set out the precautions that those who live in the same household as someone who has COVID-19, or who have stayed overnight in the same household, are advised to take to reduce risk to other people.
- 7.4 This will help to reduce the mental, physical, social, educational and economic impacts of self-isolation for both those who test positive and unvaccinated adult contacts. The Office for National Statistics COVID Test and Trace Cases Insights Survey³ reported on 26 January 2022 that approximately a third of all respondents to the survey (34%) who tested positive reported that self-isolation had a negative effect on their well-being and mental health. Of those who were not retired, 25% reported they lost their income as a result of isolating, and 17% reported that self-isolating meant they are likely to lose their job or miss out on work.

Revoking the No. 3 Regulations

- 7.5 The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 (S.I. 2020/750) came into force on 18 July 2020. The No. 3 Regulations allow local authorities to impose prohibitions, requirements or restrictions on individual premises, events, or public outdoor places, provided that strict legal tests are satisfied to reduce the risk of transmission of COVID-19.
- 7.6 Prior to the No. 3 Regulations coming into force, Local Authorities could apply to a magistrate to make an order under section 45G of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”), for example that persons wear face coverings, are subject to certain restrictions about where they go or abstain from working or trading, to reduce the risk of harm to human health. Whilst these powers are still available, it was considered proportionate to grant Local Authorities direction-making powers to deal with the height of the pandemic.
- 7.7 As a result of the success of the COVID-19 vaccination programme in offering good individual protection against severe illness, hospitalisation and death along with a reduction in the severity of the now dominant Omicron variant, only one direction has

² [Deaths in the UK | Coronavirus in the UK \(data.gov.uk\)](https://data.gov.uk/dataset/deaths-in-the-uk-coronavirus-in-the-uk)

³ [Coronavirus and self-isolation after testing positive in England - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk/coronavirus/articles/self-isolation-after-testing-positive-in-england)

been issued through the No. 3 Regulations since the move to Step 4 of the government's COVID-19 roadmap in July 2021. It is therefore not considered proportionate to extend these emergency regulations further.

- 7.8 Should Local Authorities wish to impose prohibitions or requirements to deal with a future outbreak, they will be able to rely on the pre-existing powers in the 1984 Act discussed above. In addition, the government will continue to monitor the spread of COVID-19 and will introduce further legislation where necessary.

8. European Union Withdrawal and Future Relationship

- 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.

11 Guidance

- 11.1 The Government has published guidance in relation to COVID-19 at www.gov.uk/coronavirus and this guidance will include updated information in relation to the advice provided to positive cases and to close contacts.

12 Impact

- 12.1 As this instrument revokes the Self-Isolation Regulations and the No.3 Regulations, which will cease to have effect from 24 February 2022, an Impact Assessment is not required, would be disproportionate, and therefore, has not been prepared for this instrument.

13 Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14 Monitoring & review

- 14.1 The Self-Isolation and No. 3 Regulations are being revoked, meaning that after the 24 February 2022 they will no longer be in force, and therefore no review is required.

15 Contact

- 15.1 Sophie George (Sophie.George@DHSC.gov.uk), Head of COVID-19 Self-Isolation Policy Team at the UK Health Security Agency, can be contacted with any queries regarding the instrument.
- 15.2 Robert Jenkins (Robert.Jenkins@DHSC.gov.uk) Deputy Director for Contact Tracing and Self-Isolation Policy at the UK Health Security Agency, can confirm that this explanatory memorandum meets the required standard.
- 15.3 Maggie Throup MP, Parliamentary Under Secretary of State at the Department for Health and Social Care can confirm that this explanatory memorandum meets the required standard