

Draft Regulations laid before Parliament under section 45Q(2), (3) and (4) of the Public Health (Control of Disease) Act 1984 and section 150(6) of the Local Government and Housing Act 1989, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No. 000

PUBLIC HEALTH, ENGLAND

The Health Protection (Part 2A Orders) Regulations 2010

Made - - - - 000
Coming into force - - 6th April 2010

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 45C(1), (2) and (3)(b), 45F(2)(a), 45G(7), 45L(4), 45M(3), (6) and (7), 45N(1) and (2)(b) and 45P(2) of the Public Health (Control of Disease) Act 1984(1) and section 150 of the Local Government and Housing Act 1989(2).

In accordance with section 152(6) of the Local Government and Housing Act 1989, the Secretary of State has consulted such representatives of local government as appear to him to be appropriate in connection with regulation 7.

A draft of this instrument has been approved by resolution of each House of Parliament pursuant to section 45Q(2), (3) and (4) of the Public Health (Control of Disease) Act 1984 and section 150(6) of the Local Government and Housing Act 1989.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Health Protection (Part 2A Orders) Regulations 2010 and shall come into force on 6th April 2010.

(2) These Regulations apply in relation to England only.

Interpretation

2. In these Regulations—

“the Act” means the Public Health (Control of Disease) Act 1984;

“child” means a person under the age of 18 years;

(1) 1984 c.22. See section 45T(6) of that Act for the definition of “the appropriate Minister” and section 45M(11) of that Act for the definition of “regulations” for the purposes of section 45M. Sections 45C, 45F, 45G, 45M, 45N, 45P and 45T were inserted into that Act by section 129 of the Health and Social Care Act 2008 (c.14).

(2) 1989 c.42.

“Part 2A application” means an application made to a justice of the peace for an order under Part 2A of the Act;

“Part 2A order” means an order made by a justice of the peace under Part 2A of the Act; and

“a person with parental responsibility” means a person with parental responsibility within the meaning of the Children Act 1989(3).

Duty on local authorities to give notice of Part 2A applications

3.—(1) This regulation applies where a local authority is making a Part 2A application.

(2) The local authority must make reasonable enquiries as to the existence and location of persons who fall within paragraphs (4) to (7) (as applicable).

(3) Having made reasonable enquiries pursuant to paragraph (2), the local authority must give notice of the application to the persons specified in paragraphs (4) to (7) (as applicable) where such persons are known to the local authority and contactable by it.

(4) In relation to an application for an order under section 45G(2) or (4) of the Act (power to order health measures in relation to persons), the persons specified are—

- (a) the person subject to the application (P);
- (b) a person with parental responsibility for P, if P is a child; and
- (c) P’s decision-maker (if any).

(5) Subject to paragraph (6), in relation to an application for an order under section 45H(2) or (4) of the Act (power to order health measures in relation to things), the persons specified are—

- (a) the owner of the thing; and
- (b) the person with custody or control of the thing.

(6) In relation to an application for an order under section 45H(2) of the Act in respect of a dead body or human remains, the person specified is the deceased’s next of kin (or where the deceased has more than one next of kin, any one of those persons).

(7) In relation to an application for an order under section 45I(2) or (4) (power to order health measures in relation to premises), the persons specified are—

- (a) the owner of the premises; and
- (b) the occupier of the premises, if any.

(8) The local authority is not required to give notice under paragraph (3) where P, in the reasonable view of the local authority, is likely to abscond or otherwise take steps to undermine the order applied for.

(9) The local authority is not required to give notice under paragraph (3) to a person specified in paragraph (4)(b) where exceptional circumstances exist which mean that notifying such a person would not be in P’s best interests.

(10) In this regulation—

“next of kin” means the person accorded highest rank in the following list (but if two or more persons are accorded equal ranking then each of those persons is to be treated as next of kin)—

- (a) a person with parental responsibility for the deceased person (P);
- (b) P’s husband, wife or civil partner;
- (c) a person who had been living with P up to the time of P’s death as P’s husband, wife or civil partner;

- (d) P’s child where aged 18 years or over;
- (e) P’s parent;
- (f) P’s brother or sister where aged 18 years or over; and

“P’s decision-maker” means P’s donee of enduring power of attorney or lasting power of attorney under the Mental Capacity Act 2005(4) or a deputy appointed by the Court of Protection(5) in relation to P, where decisions in connection with Part 2A applications or orders are within the scope of that person’s authority.

Evidence required for a Part 2A application in relation to persons

4.—(1) A justice of the peace cannot be satisfied that the criteria in section 45G(1) or (3) of the Act (power to order health measures in relation to persons) are met unless the evidence listed in paragraph (2) is available to the justice.

(2) That evidence is—

- (a) a report which gives details (insofar as known and relevant), or gives reasons for the omission of details, of—
 - (i) the signs and symptoms of the infection or contamination in the person (P) who is the subject of the application,
 - (ii) P’s diagnosis,
 - (iii) the outcome of clinical or laboratory tests, and
 - (iv) P’s recent contacts with, or proximity to, a source or sources of infection or contamination;
- (b) a summary of the characteristics and effects of the infection or contamination which P has or may have which includes an explanation of—
 - (i) the mechanism by which the infection or contamination spreads,
 - (ii) how easily the infection or contamination spreads amongst humans, and
 - (iii) the impact of the infection or contamination on human health (by reference to pain, disability and the likelihood of death);
- (c) in relation to applications seeking an order under section 45G(2), an assessment of the risk to human health that P presents, including a description of any acts or omissions, or anticipated acts or omissions, of P which affect that risk;
- (d) in relation to applications seeking an order under section 45G(4), an assessment of the risk to human health that the related party(6) presents, including any acts or omissions, or anticipated acts or omissions, of the related party which affect that risk;
- (e) in relation to applications seeking an order under section 45G(2), an assessment of the options available to deal with the risk that P presents; and
- (f) in relation to applications seeking an order under section 45G(4), an assessment of the options available to deal with the risk that the related party presents.

(3) A report under paragraph (2)(a) must include the details mentioned in at least one of paragraphs (2)(a)(i) to (iv).

(4) The evidence must be given by persons who are suitably qualified to give the evidence.

(5) The evidence may be given orally or in writing.

(4) 2005 c.9; in relation to lasting power of attorney, see section 9.

(5) See section 16 of the Mental Capacity Act 2005 (c.9).

(6) See section 45G(5) of the Public Health (Control of Disease) Act 1984 (c.22) for the definition of “related party”.

Period for which Part 2A order in relation to persons may be in force

5.—(1) This regulation applies in relation to Part 2A orders imposing a restriction or requirement under section 45G(2)(a) and (b) and (e) to (k) (power to order health measures in relation to persons) of the Act.

(2) The period for which the restriction or requirement imposed by or under the order may be in force must not exceed 28 days beginning with the day on which the order was made.

(3) The period of any extension of a restriction or requirement must not exceed 28 days.

(4) Where a Part 2A order is varied to impose a new restriction or requirement, the period for which that new restriction or requirement may be in force must not exceed 28 days beginning with the day on which the order was varied.

Affected persons in relation to Part 2A orders in relation to persons and dead bodies or human remains

6.—(1) The following persons are affected persons (in addition to those prescribed in section 45M of the Act) for the purposes of Part 2A orders.

(2) In the case of a Part 2A order under section 45G of the Act in relation to a person (P), P's decision-maker (if any).

(3) In the case of a Part 2A Order under section 45H(2) of the Act in relation to a dead body or human remains, the deceased's next of kin.

(4) In this regulation, "next of kin" and "P's decision-maker" have the meaning given to them in regulation 3.

Discretionary power for local authorities to charge in connection with Part 2A orders in relation to things and premises

7.—(1) This regulation applies where a local authority has incurred costs taking measures pursuant to a Part 2A order under section 45H (health measures in relation to things) or 45I (health measures in relation to premises) of the Act.

(2) Subject to paragraph (4), the local authority may impose a charge on—

- (a) the owner or person with custody or control of the thing which is the subject of an order under section 45H of the Act; or
- (b) the owner or occupier of the premises which are the subject of an order under section 45I of the Act.

(3) The amount of the charge imposed—

- (a) must not exceed the actual costs (including staff costs) incurred by the local authority in taking measures in relation to the thing or premises pursuant to the order; and
- (b) must be reasonable in the circumstances.

(4) A local authority may not impose a charge in connection with orders under section 45H of the Act which relate to a dead body or human remains.

Duty on local authorities to provide information in relation to Part 2A orders in relation to persons

8.—(1) This regulation applies where a local authority has made a Part 2A application and a justice of the peace has made a Part 2A order under section 45G (health measures in relation to persons) in respect of that application.

(2) The local authority must take all reasonable steps to ensure that the person who is the subject of the order (P) understands—

- (a) the effect of the order, the reason it has been made, the power under which it has been made and P’s right to apply for a variation or revocation of the order; and
- (b) the relevant support services available to P (and how to access them).

(3) The local authority must take the steps as soon as reasonably practicable after the order is made.

(4) Where P is under the age of 18 years, the duty under paragraph (2) is to ensure that a person with parental responsibility for P understands the matters set out in sub-paragraphs (a) and (b) of that paragraph.

Duty on local authorities to have regard to welfare following a Part 2A order in relation to persons

9.—(1) This regulation applies where a person (P)—

- (a) is detained in a hospital or other suitable establishment pursuant to a Part 2A order under section 45G(2)(c) (health measures in relation to persons); or
- (b) is kept in isolation or quarantine pursuant to a Part 2A order under section 45G(2)(d) (health measures in relation to persons).

(2) The local authority which made the application for the Part 2A order must have regard to the impact of the order on the welfare of P and P’s dependants, if any, for the duration of the order.

Duty on local authorities to report Part 2A applications to the Health Protection Agency

10.—(1) A local authority must provide a written report to the chief executive of the Health Protection Agency(7) each time it makes a Part 2A application.

(2) The report must include—

- (a) the name of the local authority;
- (b) contact details for the officer of the local authority responsible for the report;
- (c) a copy of the Part 2A application (with information that would enable the identification of the person who is the subject of the application removed);
- (d) if an order is made, a copy of that order (with information that would enable the identification of the person who is the subject of the order removed); and
- (e) if a Part 2A order is not made, the reason for it not being made.

(3) The report must be provided as soon as practicable after the application is determined and no later than 10 days beginning with the day on which the application is determined(8).

(4) In this regulation, “the application is determined” when either an order is made pursuant to the application or the application is dismissed or withdrawn.

(7) The Health Protection Agency is a body corporate established by section 1 of the Health Protection Agency Act 2004 (c.17); the position of chief executive of the Health Protection Agency is established under paragraph 1(1)(b) of Schedule 1 to that Act.
(8) Regulations under section 60A of the Public Health (Control of Disease) Act 1984 (c.22) may provide for reports to be served or given by an electronic communication.

Duty on local authorities to report variations or revocations of Part 2A Orders to the Health Protection Agency

11.—(1) A local authority must provide a written report to the chief executive of the Health Protection Agency each time a Part 2A Order made pursuant to a Part 2A application it has made is varied or revoked.

(2) The report must include—

- (a) the name of the local authority;
- (b) contact details for the officer of the local authority responsible for the report;
- (c) a copy of the order varying or revoking the Part 2A order (with information that would enable the identification of the person who is the subject of the order removed); and
- (d) a copy of the original order (with information that would enable the identification of the person who is the subject of the order removed).

(3) The report must be provided as soon as practicable after the Part 2A order is varied or revoked and no later than 10 days beginning with the day on which the local authority becomes aware that the Part 2A order has been varied or revoked.

Signatory text

Address
Date

Name
[Minister]
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to orders applied for and made under Part 2A of the Public Health (Control of Disease) Act 1984 (the Act).

Regulation 3 sets out to whom the local authority must give notice of an application for a Part 2A order.

Regulation 4 sets out the evidence that must be available to a justice of the peace before the justice may be satisfied that the criteria for making an order under section 45G of the Act are met.

Regulation 5 sets a maximum period for which specified Part 2A orders (and any extensions to those orders) may remain in force.

Regulation 6 provides for certain persons to be “affected persons” for the purposes of Part 2A orders.

Regulation 7 enables a local authority to impose charges in order to recover the costs of actions taken by the local authority pursuant to a Part 2A order where that order is in relation to “things” (as defined by the Act) and premises. Charges may not be imposed in connection with orders in relation to people or dead bodies or human remains.

Regulations 8 to 11 place various obligations on local authorities in relation to Part 2A applications and orders. Regulation 8 obliges the local authority to provide certain information to the person subject to the order. Regulation 9 obliges the local authority to have regard to the impact of the order on the welfare of the person who is the subject of the order and of any dependants that person may have where an order is for detention, isolation or quarantine. Regulations 10 and 11 require the local authority to report details of applications, orders and variations or revocations of orders to the Health Protection Agency for monitoring purposes.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Department of Health, Room 514, Wellington House, 133-155 Waterloo Road, London SE1 8UG and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk).