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Regulations made by the Secretary of State, laid before Parliament under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of each House of Parliament within twenty-eight days beginning with the day on which the instrument was made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

STATUTORY INSTRUMENTS

2021 No. 1400

PUBLIC HEALTH, ENGLAND

The Health Protection (Coronavirus, Wearing of Face Coverings) (England) (Amendment) Regulations 2021

<i>Made</i>	- - - -	<i>at 1.55 p.m. on 9th December 2021</i>
<i>Laid before Parliament</i>		<i>at 5.00 p.m. on 9th December 2021</i>
<i>Coming into force</i>	- -	<i>10th December 2021</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 45C(1), (3)(c) and (4)(d), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984⁽¹⁾.

These Regulations are made 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) in England.

The Secretary of State considers that the requirements imposed by the Health Protection (Coronavirus, Wearing of Face Coverings) (England) Regulations 2021⁽²⁾ as amended by these Regulations are proportionate to what they seek to achieve, which is a public health response to the threat.

In accordance with section 45R of that 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.

Citation, commencement, extent, application and interpretation

1.—(1) These Regulations may be cited as the Health Protection (Coronavirus, Wearing of Face Coverings) (England) (Amendment) Regulations 2021.

(1) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14).

(2) S.I. 2021/1340.

- (2) These Regulations come into force on 10th December 2021.
- (3) These Regulations extend to England and Wales, and apply—
 - (a) in England;
 - (b) in English airspace to a person who is on board an aircraft which took off from, or is to land at, a place in England;
 - (c) in the English territorial sea to a person who is on board a vessel⁽³⁾ which is not an excluded vessel.
- (4) In these Regulations—
 - (a) “English airspace” means the airspace above England or above the English territorial sea;
 - (b) “the English territorial sea” means the part of the territorial sea of the United Kingdom which is adjacent to England;
 - (c) “excluded vessel” means a vessel which—
 - (i) departed from a place other than a place in England,
 - (ii) is to dock at any time in a place other than a place in England;
 - (d) the “principal Regulations” means the Health Protection (Coronavirus, Wearing of Face Coverings) (England) Regulations 2021.

Amendment of the principal Regulations

- 2.—(1) The principal Regulations are amended as follows.
- (2) In regulation 2—
 - (a) in paragraph (1)—
 - (i) before the definition of “emergency responder”, insert—

““elite development pathway” means a development pathway established by the national governing body of a sport to prepare sportspersons—

 - (a) so that they may derive a living from competing in that sport, or
 - (b) to compete at that sport at the Paris or Beijing Olympic or Paralympic Games, or, if that sport is not part of the Paris Olympic and Paralympic Games programme, in the Commonwealth Games to be held in Birmingham;

“elite sportsperson” means an individual who—

 - (a) derives a living from competing in a sport,
 - (b) is a senior representative nominated by a relevant sporting body,
 - (c) is a member of the senior training squad for a relevant sporting body, or
 - (d) is aged 16 or above and on an elite development pathway;”;
 - (ii) after the definition of “goods”, insert—

““place of worship” means any building, room or other premises used for public religious worship;”;
 - (iii) in the definition of “relevant place”, in paragraphs (a) and (b) and in the closing words, for “the Schedule” substitute “Schedule 1”;
 - (iv) after the definition of “relevant place”, insert—

(3) “Vessel” is defined in section 74 of the Public Health (Control of Disease) Act 1984.

““relevant sporting body” means the national governing body of a sport which may nominate sportspersons to represent—

- (a) Great Britain and Northern Ireland at the Paris or Beijing Olympic or Paralympic Games, or
- (b) England, Wales, Scotland, Northern Ireland, Gibraltar, Guernsey, Jersey or the Isle of Man at the Commonwealth Games to be held in Birmingham in those sports which are not part of the Paris Olympic and Paralympic Games programme;

“religious school” means a school, as defined in section 4 of the Education Act 1996(4), which is—

- (a) designated as having a religious character under section 69(3) of the School Standards and Framework Act 1998(5), or
- (b) recorded as having a religious ethos in the register of independent educational institutions in England kept by the Secretary of State under section 95 of the Education and Skills Act 2008(6);

“senior representative” means an individual who is considered by a relevant sporting body to be a candidate to qualify to compete on behalf of—

- (a) Great Britain and Northern Ireland at the Paris or Beijing Olympic or Paralympic Games, or
- (b) England, Wales, Scotland, Northern Ireland, Gibraltar, Guernsey, Jersey or the Isle of Man at the Commonwealth Games to be held in Birmingham in those sports which are not part of the Paris Olympic and Paralympic Games programme;”;

(b) in paragraph (4)(b), for “the Schedule” substitute “Schedule 1”;

(c) in paragraph (5)—

(i) in sub-paragraph (b), at the beginning, insert “subject to sub-paragraph (ba),”;

(ii) after sub-paragraph (b), insert—

“(ba) seating, terraces or other standing areas within a stadium or theatre which—

(i) are partly covered and partly uncovered, and

(ii) open onto an uncovered pitch, court, track, stage, or other open-air area where competition or performance is taking place,

are to be treated as outdoor areas;”.

(3) In regulation 3—

(a) in paragraph (2)—

(i) in sub-paragraph (f), for “transport hub”, substitute “relevant place”;

(ii) after sub-paragraph (i), insert—

“(j) an elite sportsperson undertaking training or taking part in a competition;

(4) 1996 c. 56. Subsection (1) was substituted by section 51 of the Education Act 1997 (c. 44) (“the 1997 Act”) and amended by Schedule 22 to the Education Act 2002 (c. 32), section 95 of the Childcare Act 2006 (c. 21) (“the 2006 Act”), paragraph 9 of Schedule 13 to the Education Act 2011 (c. 21) (“the 2011 Act”) and S.I. 2019/1027. Subsection (1A) was inserted by section 95 of the 2006 Act. Subsections (1B) and (1C) were inserted by paragraph 9 of Schedule 13 to the 2011 Act. Subsection (2) was amended by paragraph 10 of Schedule 7 to the 1997 Act. There are other amendments to section 4 but none is relevant.

(5) 1998 c. 31.

(6) 2008 c. 25.

- (k) a coach of an elite sportsperson acting in the course of their employment or in the course of providing their services;
- (l) a referee acting in the course of their employment or in the course of providing their services;
- (m) a professional dancer undertaking training or taking part in a competition;
- (n) a professional choreographer acting in the course of their employment or in the course of providing their services;
- (o) a pupil in a religious school who is under the age of 19 and is undertaking education or training in a place of worship, where such education or training forms part of the curriculum of the religious school;
- (p) a performer performing in the course of their employment or in the course of providing their services;
- (q) a person who is in premises of a kind mentioned in paragraph 5, 7, 9, 13 or 15 of Schedule 1 (“community premises”), or a separate and enclosed part of those premises—
 - (i) if the person is there to participate in a gathering taking place for a purpose listed in Schedule 2, and
 - (ii) at a time when the community premises, or the separate and enclosed part of the community premises, as the case may be, have been set aside for the sole use of people participating in that gathering;
- (r) a couple at—
 - (i) the solemnisation of their marriage, formation of their civil partnership or conversion of their civil partnership into a marriage in accordance with the Marriage Act 1949⁽⁷⁾, the Marriage (Registrar General’s Licence) Act 1970⁽⁸⁾, the Civil Partnership Act 2004⁽⁹⁾ or the Marriage (Same Sex Couples) Act 2013⁽¹⁰⁾, or
 - (ii) their alternative wedding ceremony.

(2A) For the purposes of paragraph (2)(r), an event is an “alternative wedding ceremony” if it is a ceremony, including a ceremony based on a person’s faith or belief or lack of belief, to mark the union of two people, other than a ceremony conducted for a purpose mentioned in sub-paragraph (2)(r)(i).”;
- (b) in paragraph (3), for “the Schedule” substitute “Schedule 1”;
- (c) omit paragraph (5);
- (d) in paragraph (6), in the opening words, after “regulation”, insert—

“__

“professional choreographer” means a person who derives their living from choreographing dance;

“professional dancer” means a person who derives their living from dance;

“pupil” has the same meaning as in section 3 of the Education Act 1996⁽¹¹⁾.”;
- (4) In regulation 4(3), after sub-paragraph (j), insert—

(7) 1949 c. 76.
 (8) 1970 c. 34.
 (9) 2004 c. 33.
 (10) 2013 c. 30.
 (11) 1996 c. 56.

- “(k) to a performer performing in the course of their employment or in the course of providing their services.”.
- (5) In regulation 5, after paragraph (i), insert—
- “(j) it is reasonably necessary for P to sing, and P removes P’s face covering to do so, and for these purposes, the occasions when it is reasonably necessary for P to sing include singing as part of a choir, or during a service or rehearsal, or for performance.”.
- (6) In regulation 6, after paragraph (5), insert—
- “(6) For the purposes of this regulation and regulation 7, the “person responsible for carrying on a business” includes the owner, proprietor or manager of that business.”.
- (7) In regulation 7(2), for sub-paragraph (c), substitute—
- “(c) “relevant area” means—
- (i) any place where a person is required to wear a face covering under these Regulations, and
- (ii) any premises or venue referred to in Part 2 of Schedule 1.”.
- (8) Omit regulation 8.
- (9) In regulation 10—
- (a) in paragraph (1), for “3, 4 or 6” substitute “3 or 4”;
- (b) in paragraph (2), after “contravenes” insert “the requirements in regulation 6 or”.
- (10) In regulation 12—
- (a) in paragraph (1)(a), omit “in relation to a contravention of the requirements in regulation 3 or 4”;
- (b) in paragraph (2), for the words from “10(1)” to “(3) or (4)” substitute “10(1), (3) or (4)”;
- (c) in paragraph (4), for the words from “10(1)” to “(3) or (4)” substitute “10(1), (3) or (4)”.
- (11) In regulation 13—
- (a) in paragraph (1), omit sub-paragraph (b);
- (b) in paragraph (2), omit “regulation 10(1) referred to in paragraph (1)(a), or under”;
- (c) in paragraph (4), omit “regulation 10(1) referred to in paragraph (1)(a) or under”;
- (12) In regulation 15—
- (a) in paragraph (1), for “20th December 2021” substitute “26th January 2022”;
- (b) omit paragraph (2).
- (13) For the Schedule, substitute—

“SCHEDULE 1

Regulation 3

Relevant places

PART 1

Places where face coverings must be worn

1. Shops.
2. Enclosed shopping centres.

3. Banks, building societies, credit unions, short-term loan providers, savings clubs and undertakings which by way of business operate a currency exchange office, transmit money (or any representation of money) by any means or cash cheques which are made payable to customers.

4. Post Offices.

5. Places of worship.

6. Crematoria and burial ground chapels, and for these purposes, “crematorium” means a building fitted with appliances for burning human remains, and includes everything incidental or ancillary thereto.

7. Community centres, youth centres, members’ clubs and social clubs.

8. Public areas in hotels and hostels.

9. Concert halls, exhibition halls, conference centres and other public halls.

10. Cinemas.

11. Museums, galleries, aquariums, zoos and visitor farms, and other tourist, heritage or cultural sites.

12. Bingo halls.

13. Public libraries and reading rooms.

14. Casinos.

15. Theatres.

16. Premises which are being used as or which contain a polling station for an election or referendum which is held in accordance with provision made by or under an Act.

17. Premises which are being used for the opening of postal votes, or the counting of votes, cast in an election or referendum which is held in accordance with provision made by or under an Act.

18. Play and soft play areas and soft play centres.

19. Snooker and pool halls.

20. Amusement arcades and adult gaming centres.

21. Games and recreation venues (including laser quest, escape rooms and recreational driving facilities).

22. Skating rinks.

23. Circuses.

24. Theme parks, fairgrounds, funfairs, and adventure parks.

25. Sports stadia.

26.—(1) Any motor vehicle of a class included in categories B, C, C1, C+E and C1+E of Schedule 2 to the Motor Vehicles (Driving Licences) Regulations 1999⁽¹²⁾ (“the 1999 Regulations”), during any period during which the vehicle is being used in the course of a driving test, or the practical tests for giving driving instruction.

(2) A motor vehicle of a class included in category B, C, C1, C+E and C1+E of Schedule 2 to the 1999 Regulations during any period in which such a vehicle is being used in the course of a driving lesson given by—

(12) S.I. 1999/2864. Schedule 2 was amended by S.I. 2005/2717, 2012/977, 2014/613, 2020/663 and 2021/1154.

- (a) in the case of a motor vehicle of a class included in category B, an approved driving instructor for remuneration, whether as an employee or otherwise;
 - (b) in the case of a motor vehicle of a class included in categories C, C1, C+E and C1+E, a qualified driver for remuneration, whether as an employee or otherwise.
- (3) Any premises or part of a premises which are being used for a driving theory test.
- (4) In this paragraph—
- (a) “approved driving instructor” has the meaning given in regulation 2 of the Motor Cars (Driving Instruction) Regulations 2005(13) (“the 2005 Regulations”);
 - (b) “driving test” means a practical test for the relevant class of vehicle as prescribed by regulation 40 of the 1999 Regulations(14);
 - (c) “driving theory test” means a theory test as defined in regulation 3A of the 1999 Regulations(15);
 - (c) “practical tests for giving driving instruction” means—
 - (i) the driving ability and fitness test and the instructional ability and fitness test, as prescribed by regulations 6 and 7 of the 2005 Regulations(16);
 - (ii) the test of continued ability and fitness to give instruction as prescribed by regulations 12 and 12A of the 2005 Regulations(17);
 - (d) “qualified driver” has the meaning given in regulation 17 of the 1999 Regulations(18).

27. Motorway service areas.

28. Sexual entertainment venues, within the meaning of paragraph 2A of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982(19).

Part 2

Places where face coverings need not be worn

- 29.—(1) The following premises—
- (a) restaurants, including restaurants and dining rooms in hotels or members’ clubs;
 - (b) cafes and canteens;
 - (c) bars, including bars in hotels or members’ clubs;
 - (d) public houses;
 - (e) any business which consists wholly or mainly of the provision of, whether for payment or otherwise—
 - (i) a waterpipe to be used for the consumption of tobacco or any other substance on the premises, or
 - (ii) a device to be used for the recreational inhalation of nicotine or any other substance on the premises;

(13) S.I. 2005/1902. The definition of “approved driving instructor” was amended by S.I. 2016/1089.

(14) Regulation 40 was substituted by S.I. 2008/1435 and amended by S.I. 2009/788, 2010/1203, 2012/977 and 2021/1154.

(15) Regulation 3A was inserted by S.I. 2008/1435 and amended by S.I. 2009/788.

(16) Regulation 7 was amended by S.I. 2017/1156.

(17) Regulation 12 was amended by S.I. 2014/2216 and 2017/1156. Regulation 12A was inserted by S.I. 2006/525.

(18) Regulation 17 was amended by S.I. 2005/524 and 2717.

(19) 1982 c. 30. Paragraph 2A was inserted by section 27 of the Policing and Crime Act 2009 (c. 26).

(f) any other premises, or part of premises, which are being used wholly or mainly by people eating or drinking.

(2) The exemption in sub-paragraph (1)(f) does not apply in relation to any part of the premises in which people are not eating or drinking.

30.—(1) The following premises—

- (a) fitness studios and gyms;
- (b) dance studios;
- (c) leisure centres;
- (d) swimming pools or water or aqua parks;
- (e) any other premises, or part of premises, which are being used wholly or mainly by people taking exercise or dancing.

(2) The exemption in sub-paragraph (1)(e) does not apply in relation to any part of the premises in which people are not taking exercise or dancing.

31. Premises (other than registered pharmacies) providing wholly or mainly medical or dental services, audiology services, chiropody, chiropractic, osteopathic, optometry or other medical services including services relating to mental health.

32. Photography studios.

33. The following premises—

- (a) nightclubs;
- (b) dance halls and discotheques.
- (c) any other venue which—
 - (i) opens at night,
 - (ii) has a dance floor or other space for dancing by members of the public (and for these purposes members of the venue in question are to be considered members of the public), and
 - (iii) provides music, whether live or recorded, for dancing.”.

(14) After Schedule 1, as substituted, insert—

“SCHEDULE 2

Regulation 3(2)(q)(i)

Gatherings taking place in community premises where face coverings need not be worn

1. Gatherings taking place for the purposes of—

- (a) educational activities of a school;
- (b) a course of study or essential life skills training provided by—
 - (i) a 16 to 19 Academy, or
 - (ii) a provider of further education;
- (c) activities relating to residing at a school, a 16 to 19 Academy or a provider of further education;
- (d) provision specified in an education, health and care plan;
- (e) through a skills programme consisting of—
 - (i) a work experience placement, or
 - (ii) work preparation training;

- (f) applying for, and obtaining, work;
- (g) meeting a requirement for a particular area of work, other than driving tests, driving theory tests or practical tests for giving driving instruction referred to in paragraph 26 of Schedule 1;
- (h) professional training that is working towards an external accreditation recognised by a professional body, but not including training undertaken for the purposes of any test referred to in paragraph 26 of Schedule 1;
- (i) exams and assessments carried out in connection with any of the matters mentioned in paragraphs (a) to (h), other than driving tests, driving theory tests or practical tests for giving driving instruction referred to in paragraph 26 of Schedule 1;
- (j) a parent and child group which is organised by a business, a charitable, benevolent or philanthropic institution or a public body for the benefit of children under the age of five;
- (k) childcare, within the meaning of section 18 of the Childcare Act 2006⁽²⁰⁾, which is provided by a person registered to provide childcare under Part 3 of that Act;
- (l) organised and supervised activities taking place for the purpose of teaching, training, instructing, or otherwise caring for or improving the wellbeing of a child, or a person who was under the age of 18 on 31st August 2021, which do not come within any of subparagraphs (a) to (e).

2. In this Schedule—

“16 to 19 Academy” has the meaning given by section 1B of the Academies Act 2010⁽²¹⁾;

“education, health and care plan” means an EHC plan within the meaning of section 37(2) of the Children and Families Act 2014⁽²²⁾;

“further education” has the meaning given by section 2 of the Education Act 1996⁽²³⁾.”

At 1.55 p.m. on 9th December 2021

Maggie Throup
Parliamentary Under-Secretary of State
Department of Health and Social Care

⁽²⁰⁾ 2006 c. 21. Section 18 was amended by paragraph 19 of Schedule 1 and Schedule 4 to the Children and Young Persons Act 2008 (c. 23), paragraph 21 of Schedule 9 to the Criminal Justice and Courts Act 2015 (c. 2), and by S.I. 2010/813.

⁽²¹⁾ 2010 c. 32. Section 1B was inserted by section 53(7) of the Education Act 2011 (c. 21).

⁽²²⁾ 2014 c. 6. Section 37(2) was amended by S.I. 2015/914.

⁽²³⁾ 1996 c. 56. The definition of “further education” was amended by paragraph 33 of Schedule 21 and by Schedule 22 to the Education Act 2002 (c. 32).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Protection (Coronavirus, Wearing of Face Coverings) (England) Regulations 2021 (“the principal Regulations”) to add to the list of places where face coverings must be worn, provide for gatherings where face coverings need not be worn, correct errors in the principal Regulations, remove the powers of the Secretary of State to disapply its legal requirements for the purposes of legal research, and clarify which persons are potentially liable to prosecution for an offence in relation to contraventions of regulations 6 and 7. They also extend the period during which the Regulations are in force until 26th January 2022.

No impact assessment has been prepared for these Regulations.