

EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, WEARING OF FACE COVERINGS IN A RELEVANT PLACE AND ON PUBLIC TRANSPORT) (ENGLAND) (AMENDMENT) (NO.3) REGULATIONS 2020

2020 No. 1026

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 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 amending the Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulation 2020 (S.I. 2020/791) (“the Face Coverings Regulations”) to require members of the public to wear face coverings in additional indoor premises in England and requires the wearing of a face covering by staff or other workers working in certain retail, hospitality and leisure settings. This instrument also increases the amount of a fixed penalty notice (“FPN”) which can be issued for each offence under the Face Covering Regulations and the Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020 (“Public Transport Regulations”).

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 Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place and on Public Transport) (England) (Amendment) (No 3) Regulations 2020 (“Amending 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 Amending 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). The Amending Regulations came into force on 24 September 2020 and are published on www.legislation.gov.uk. The Amending Regulations cease to have effect at the end of the period of 28 parliamentary sitting 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. Further, the Face Coverings Regulations,

which this instrument amends, provide that they expire at the end of the period of twelve months beginning with the day on which they came into force.

- 3.2 The main purpose of the Amending Regulations is to make amendments to the Face Coverings Regulations in order to extend the scope of these regulations by specifying further indoor premises where face coverings must be worn by members of the public, and extending the requirement to wear a face covering to staff working in indoor public areas of relevant places, and where they come or likely come into contact with members of the public.

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)

- 3.3 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, Wearing of Face Coverings in a Relevant Place and on Public Transport) (England) (Amendment) (No 3) Regulations 2020 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”), as inserted by the Health and Social Care Act 2008 (“the 2008 Act”), provides a legal basis for protecting 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, for use in rare circumstances where voluntary cooperation cannot be obtained. Overall, the amended 1984 Act sets out a framework for health protection which requires many of the 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 in England and Wales. The threat can come from outside England and Wales.
- 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. This instrument is part of a wider set of measures introduced to respond to those health risks, as described in the Explanatory Memorandum to the Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 4) Regulations 2020 (S.I 2020/588).
- 6.4 The instrument amends the Face Coverings Regulations which require individuals to wear a face covering when in a “relevant place”. A relevant place means any premises, or any part of premises, listed in Schedule 1 or a transport hub which are indoors. This instrument updates Schedule 1 by specifying that face coverings must be worn in

restaurants, including restaurants and dining rooms in hotels or members' clubs, bars, including bars in hotels or members' clubs, public houses and theatres. The reasonable excuse for eating and drinking remains in the Face Covering Regulations so customers in these premises will not be required to wear a face covering when seated to eat or drink. They must wear face coverings in these premises at all other times.

- 6.5 Regulation 2(4) of this instrument inserts a new Regulation 2A into the Face Covering Regulations. This removes the existing exemptions for staff and other workers in Regulation 3(2)(b) or (c) of the Face Covering Regulations if they are working in settings listed in Schedule 3, where those spaces are open to member of the public and they may or are likely to come into close contact with members of the public. The settings listed in Schedule 3 include shops, restaurants and other leisure attractions such as museums and tourist attractions. Its effect therefore is to require the wearing of face coverings by staff and other workers in those settings.
- 6.6 Regulation 2(6) of this instruments amends Regulation 7 of the Face Covering Regulations and the Public Transport Regulations so that the amount of a FPN imposed for the first offence under the Face Covering Regulations is now set at £200 (previously £100), and continue to double at each subsequent offence up to a maximum amount of £6400. The amount of a FPN for the first offence will now reduce to an increased amount of £100 (previously £50) if paid within 14 days. There are no reductions from the second or subsequent fines. This instrument also makes similar amendments to the Public Transport Regulations.

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 Since 11th May, the Government has advised the public to wear face coverings in enclosed spaces where they might find it difficult to maintain social distance and come into contact with those they would not usually meet. Face coverings have been mandatory on public transport in England since 15th June, and since 24th July the wearing of face coverings has been mandatory in shops and supermarkets and transport hubs. On 31st July, the Prime Minister announced that the requirement to wear a face covering in these settings will be extended to cover further indoor public places such as places of worship, museums, galleries and other places listed in the Face Covering Regulations as amended. On 22nd September, the Prime Minister announced in the House of Commons that the requirement to wear a face covering would be extended to further hospitality settings, and that staff in customer facing roles would also be required to wear a face covering in certain circumstances, for example in retail and hospitality settings.
- 7.3 In order to increase the protection offered to members of the public and workers in hospitality settings, these Amending Regulations amend Schedule 1 of the Face Covering Regulations to require individuals to wear a face covering when in a restaurant, including restaurants and dining rooms in hotels or members' clubs, bars, including bars in hotels or members' clubs, public houses and theatres. Regulation

2(8) of the Amending Regulations amends Schedule 1 of the Face Covering Regulations by removing the exclusion for areas with seating or tables provided for the consumption of food and drink. Members of the public are therefore required to wear a face covering when entering, leaving and moving around in these hospitality settings.

- 7.4 The reasonable excuses in Regulation 4 of the Face Covering Regulations are unchanged. As such face coverings can be removed within these settings for the purposes of eating and drinking or taking medication. This amendment will reduce the risk of passing on the infection when moving through a restaurant, bar or other hospitality setting, hence offering greater protections to those visiting these indoor spaces as well as those working within them. While face coverings are not a substitute for distancing and hand hygiene, there is some evidence to suggest that when used correctly, face coverings may have some benefit in reducing the likelihood of those with the infection passing it on to others, particularly if they are asymptomatic.
- 7.5 Regulation 2(4) of these Amending Regulations inserts a new Regulation 2A into the Face Covering Regulations. The effect of Regulation 2A is that it now requires staff and other workers to wear face coverings in the settings listed in Schedule 3, where these are open to the public, and the staff member may or is likely to come into contact with members of the public. This includes staff working in public facing areas in shops, supermarkets, museums, galleries, cinemas and other indoor settings as outlined in the new Schedule 3 to the Face Covering Regulations.
- 7.6 Regulation 2(4) of the Amending Regulations also inserts a new Regulation 2B into the Face Covering Regulations. Regulation 2B states that the requirement to wear a face covering does not supersede any obligations placed on employees by their employers to wear Respiratory Protective Equipment (RPE). In such case, employees would be expected to comply with the provisions outlined by their employer, in conjunction with any obligations under the Health and Safety at Work act 1974, and wear RPE. Including staff within the scope of the Face Covering Regulations will enhance the protections offered to both workers and customers in these settings, where people are more likely to come into close contact with others they do not regularly meet. This will help minimise the spread of the virus particularly when moving around these settings.
- 7.7 Regulation 2(5) of these Amending Regulations inserts a new exemption in Regulation 3(2)(o) the Face Covering Regulations. A staff member or other worker in a setting listed in Schedule 3 which is open to the public will not be required to wear a face covering if they are a performer performing in the course of their employment or in the course of providing their services.
- 7.8 SAGE has previously advised that there is evidence to recommend the use of cloth masks in certain higher-risk settings as a precautionary measure where masks could be at least partially effective. These settings would be enclosed spaces where social distancing is not possible to maintain consistently, creating a risk of close social contact with multiple parties the person does not usually meet. Distancing (>2 metres) remains the preferred option where possible. In such settings, evidence would support a policy where cloth masks could be used for short durations where unavoidable closer interactions with others are occurring or likely. This advice does not replace or change existing advice on other measures – such as hand washing, social distancing and self-isolation. Mandating the use of face coverings in additional hospitality settings and extending the requirement to staff and other workers working in customer

facing roles, when used alongside other measures, therefore offers a reasonable protective measure to reduce the risk of infection or contamination by a virus that presents a significant harm to public health.

- 7.9 The Amending Regulations also make changes to the Fixed Penalty Amounts for offences in relevant places and on public transport. Regulation 2(6) of this instrument amends Regulation 7 of the Face Covering Regulations and the Public Transport Regulations so that the amount of a FPN imposed for the first offence under the Face Covering Regulations is now set at £200 (previously £100), and continue to double at each subsequent offence up to a maximum amount of £6400. The amount of a FPN for the first offence will now reduce to an increased amount of £100 (previously £50) if paid within 14 days. There are no reductions from the second or subsequent fines. This is in line with penalties for other national coronavirus regulations. Whilst the vast majority of people have complied with rules throughout the pandemic, and enforcement measures remain a last resort, these amendments will further deter non-compliance and tackle those who repeatedly breach the requirement to wear a face covering.
- 7.10 The Amending Regulations therefore support the overall aims of the 1984 Act to protect the public from threats arising from infectious disease or contamination from chemicals or radiation. The World Health Organisation advised on 5th June 2020 that fabric face coverings should be used in public where social distancing is not possible.

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 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 the Face Coverings Regulations, as amended by this instrument, apply and those who will be exempt from those Regulations.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is expected to be positive. Mandating face coverings in further indoor settings and requiring staff members and other workers to wear face coverings may give members of the public confidence to visit these premises which may increase visitors to these settings bringing benefit to the business. The policy may also offer added protection to employees working in

these settings, in addition to the existing mitigations that have been put in place by businesses already.

- 12.2 The Department has considered the fact that some people may be deterred from visiting the relevant premises which are added to the list of relevant places in the Face Coverings Regulations by these Amending Regulations due to the requirement 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. Current guidance on gov.uk makes clear that a face covering includes any covering that covers the mouth and nose which may be homemade or purchased. 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 the Face Coverings Regulations which continue to apply and which ensure that this policy does not unfairly discriminate against those with protected characteristics.
- 12.3 There is no significant impact on the public sector.
- 12.4 An Impact Assessment has not been prepared for this instrument because it amends an instrument that will cease to have effect at the end of a 12 month period, beginning on the day on which it came into force (24th July 2020) and which was made urgently and is time limited as part of the Government's response to Covid-19.

13. Regulating small business

- 13.1 No specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

- 14.1 The Face Coverings Regulations include a statutory review provision requiring them to be reviewed before the end of the period of 6 months beginning on the day on which they came into force (24th July 2020). That review provision is unaffected by this amending instrument.
- 14.2 This instrument amends the Face Coverings Regulations and the expiry and review provisions set out in those Amending Regulations will continue to apply. The Face Coverings Regulations cease to have effect at the end of the period of twelve months beginning on the day on which they came into force (24th July 2020).

15. Contact

- 15.1 Sameen Farouk at the Department for Health and Social Care, Sameen.Farouk@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 for Health and Social Care can confirm that this explanatory memorandum meets the required standard.
- 15.3 The Rt Hon Matt Hancock MP, at the Department for Health and Social Care can confirm that this explanatory memorandum meets the required standard.