

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (SELF-ISOLATION) (ENGLAND) (NO. 3) REGULATIONS 2021

2021 No. 1073

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 extends:
 - 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 (S.I. 2020/750) (the “No. 3 Regulations”)to the end of 24 March 2022.
- 2.2 This instrument makes amendments to the Self-Isolation Regulations:
 - a) to clarify when a household contact will be exempt from self-isolation due to being fully vaccinated;
 - b) to extend the exemption from the duty to self-isolate for fully vaccinated persons to those who have received doses of two different Medicines and Healthcare Products Regulatory Agency (MHRA) authorised vaccines in the UK; and,
 - c) to clarify the requirements on those taking part in a testing scheme, in a situation where they test positive with a lateral flow test, but receive a subsequent negative confirmatory PCR test result.

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, for reason of urgency, it is necessary to make this instrument without a draft being so laid and approved.
- 3.2 This instrument extends the No. 3 Regulations to expire at the end of 24 March 2022, so that local authorities (and the Secretary of State) retain powers to respond to local serious and imminent public health threats as a response to the spread of SARS-CoV-2 throughout the autumn and winter months. The No. 3 Regulations act as an important public health tool for local authorities in their local coronavirus outbreak management, compliance and enforcement activities. The No. 3 Regulations would otherwise expire at the end of 27 September 2021.

- 3.3 This instrument also extends the Self-Isolation Regulations to expire at the end of 24 March 2022, retaining the legal duty to self-isolate for positive cases and those close contacts who are not exempt. As with the No. 3 Regulations, this is a response to the spread of SARS-CoV-2 throughout the autumn and winter months, as set out in the recently published COVID-19 Response: Autumn and Winter Plan 2021, and therefore this instrument is urgent in order to extend both sets of Regulations.
- 3.4 This instrument was made on 21 September 2021, laid on 22 September 2021 and published on www.legislation.gov.uk later that day. This instrument will come into force at 23:55pm on the 27 September 2021 and remain in force if debated and approved by Parliament within 28 days. The Self-Isolation Regulations and the No. 3 Regulations will both expire at the end of 24 March 2022 unless extended.

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, Sajid Javid MP has made the following statement regarding Human Rights:

“In my view the provisions of The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) (No. 3) 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. This 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) (“COVID-19”).
- 6.5 In particular, The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 imposed requirements on people who are notified of a legal obligation to self-isolate. This plays a key role in slowing or preventing a rise in the rate of reproduction (R) of COVID-19. The instrument required persons who have been notified, other than through the NHS COVID-19 app, that they have tested

positive for coronavirus or have been identified as a close contact of someone who has tested positive, to self-isolate for a specified period.

- 6.6 The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) Regulations 2021, which came into force on 19 July 2021, made amendments to the legal duty to self-isolate. The following amendments to the Self-Isolation Regulations were included:
- From 19 July 2021, a person can leave self-isolation to post an antibody test.
 - From 16 August 2021, a person is not required to self-isolate if they are notified that they have been in close contact with a person who has tested positive, if the person:
 - has completed a course of an authorised vaccine administered in the UK; or,
 - has participated or is participating in an authorised clinical trial of a coronavirus vaccine; or,
 - can evidence that they are unable to be vaccinated for clinical reasons.
 - An approved vaccination was defined under Regulation 2(8). “Completing a course” means that the person is more than 14 days post-completion of their vaccine course as at the date they had close contact.
 - A removal of the duty on a child under the age of 18 to self-isolate where they are notified that they have been in close contact with a person who has tested positive.
- 6.7 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.

Legislative Changes

- 6.8 Regulations 2(6) and 3 extend the date of expiration of the Self-Isolation Regulations and the No. 3 Regulations from the end of 27 September 2021 to the end of 24 March 2022.
- 6.9 Regulation 2(2) clarifies the circumstances under which a fully vaccinated household close contact will be exempt from self-isolation.
- 6.10 Regulation 2(2) also amends the definition of fully vaccinated person to include those who have been vaccinated with doses of two different MHRA authorised vaccines.
- 6.11 Regulation 2(3-5) resolves an unintended interaction between regulation 2D and regulation 2C so that anyone self-isolating under Regulation 2B must complete their period of self-isolation or requirements of the testing scheme under Regulation 2D, even when they test positive but are subsequently released from a requirement to self-isolate as a positive case as a result of a negative confirmatory PCR test.

7. Policy background

What is being done and why?

Extending the Self-Isolation Regulations

- 7.1 The Self-Isolation Regulations came into force on 28 September 2020 and had been due to expire at the end of 27 September 2021. Based on public health advice around

the risk posed by COVID-19 and the need to ensure self-isolation for both those who test positive and for unvaccinated adult close contacts, it has been deemed necessary to extend those regulations for a further six months. This approach remains proportionate for controlling the risk that COVID-19 poses to public health.

- 7.2 Extending the legal duty for positive cases and unvaccinated close contacts to self-isolate is supported by the impact self-isolation has had on reducing the transmissibility of COVID-19, as shown in the Canna Model, July 2021.
- 7.3 Although the vaccination programme has been successful in administering over 40.6 million first doses, and over 37 million second doses, totalling 77,718, 458, as of 16 September 2021¹, data published in the Canna Model Technical Report², measuring the impact of self-isolation between June 2020 and April 2021, highlights the efficacy of self-isolation in reducing the transmissibility of COVID-19. The study states that during this time period “1.2-2.0m secondary cases” were “directly prevented”, and that this reduction in secondary cases may have prevented “100-170K hospitalisations” and “26-45K deaths”.
- 7.4 Additionally, the COVID-19 response: Autumn and Winter plan 2021³, sets out the Government’s approach for managing the pandemic over the autumn and winter. The report states that cases have been rising since the end of July 2021 and are “significantly higher than at this point last year” and that “the return of students to schools and universities and workers to workplaces after the summer holidays is likely to put further upward pressure on case numbers”. This supports the need for extending the Self-Isolation Regulations.

Definition of ‘fully vaccinated’ for household contacts

- 7.5 The Self-Isolation Regulations had stipulated a close contact who was fully vaccinated at the time of contact with a positive case was exempt from the legal duty to self-isolate. However, where a contact is in the same household as a positive case, the dates used for determining the period of transmissibility are either the date when the positive case first developed symptoms, or, where the case was asymptomatic, the date when they took the test that led to the positive result. There is a need to clarify that these are also the points at which household contacts must be fully vaccinated in order to be exempt from the requirement to self-isolate. This clarification will ensure consistency in the regulations for household contacts.
- 7.6 This amendment will align the approach taken for vaccine exemption with the approach already taken to determine the start of the self-isolation period for household contacts. This will give individuals greater clarity over whether or not they are exempt from self-isolation as a household contact.

Daily Contact Testing

- 7.7 This amendment is intended to clarify the obligations of close contacts in a situation where they are taking part in a regular testing programme under regulation 2D and test positive with a Lateral Flow Test at an assisted testing site, followed by a negative result from a confirmatory PCR test. This amendment ensures that these individuals

¹ [Vaccinations in England | Coronavirus in the UK \(data.gov.uk\)](https://data.gov.uk/dataset/vaccinations-in-england-coronavirus-in-the-uk)

² The Canna Model, Assessing the Impact of NHS Test and Trace on COVID-19 transmission: June 2020 – April 2021, [The Canna model - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97422/canna-model-2021-04.pdf)

³ [COVID-19 Response: Autumn and Winter Plan 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97422/covid-19-response-autumn-and-winter-plan-2021.pdf)

remain under a legal duty to either complete their regular testing programme or self-isolate until the end of their original self-isolation period as a contact.

- 7.8 Daily contact testing schemes require that their participants take a minimum number of tests throughout the period during which they would have been required to self-isolate. This sustained testing requirement accounts for the risk that a person has been in close contact with a confirmed positive case and should they be infected, they may not have a high enough viral load to test positive at the time of the test. As participants sign up to regular testing as part of these schemes, they are expected to complete the testing regimen.

Those who have received doses of two different vaccines

- 7.9 The Self-Isolation Regulations had not explicitly allowed for an exemption from self-isolation for persons who had received doses of two different MHRA authorised vaccines. PHE and the Joint Committee on Vaccination and Immunisation (JCVI) have subsequently published guidance on the exceptional circumstances under which doses of two different vaccines may be administered and have confirmed that MHRA-approved mixed doses administered in the UK will provide equivalent levels of protection to those provided by two doses of the same MHRA-approved vaccine. Therefore, including recipients of mixed dose vaccines explicitly in the definition of fully vaccinated will clarify that they should be treated in the same way as other fully vaccinated individuals and exempt from the requirement to self-isolate if notified that they are a close contact of a positive case.

Extending the No. 3 Regulations

- 7.10 The Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020 (S.I. 2020/750) came into force on 18 July 2020 and are currently due to expire at the end of 27 September 2021. The No. 3 Regulations allow local authorities, as well as direction powers for the Secretary of State, 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. Restrictions could include the closure of premises or restrictions on access. The powers conferred through these Regulations have been used by local authorities 330 times to date.⁴
- 7.11 The extension will ensure that local authorities retain powers to respond to local serious and imminent public health threats as a result of the spread of coronavirus throughout the autumn and winter months. The No. 3 Regulations will continue to act as an important public health tool for local authorities in their local coronavirus outbreak management, compliance and enforcement activities. This is particularly important in light of the revocation of the other restrictions at step 4 of the Government's COVID-19 Roadmap and the continued high frequency of coronavirus cases in England.

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.

⁴ As of 16 September 2021

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 it has been developed with input from relevant stakeholders.

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 amendments.

12. Impact

12.1 An Impact Assessment has not been prepared for this instrument because it is a temporary measure which is part of the Government's response to COVID-19. As this instrument will cease to have effect after 6 months, an Impact Assessment is not required and would be disproportionate.

12.2 The extensions made by this instrument fall under the Civil Contingencies Exclusion of the Better Regulation Framework and the Better Regulation Executive will not seek to enforce the current administrative requirement for validating impacts for temporary emergency COVID-19 legislation in advance of the wider reform of the better regulation framework.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The amendment to the Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020 (S.I. 2020/750) and The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 (S.I. 2020/1045) that this instrument establishes will cease to have an effect on 24 March 2022, unless renewed.

14.2 The Self-Isolation Regulations include a statutory review period of 6 months. The No. 3 Regulations do not include a statutory review clause. Any directions made by local authorities using their powers must be reviewed every seven days.

15. Contact

15.1 Tony Thomas at the Department of Health and Social Care, email: Tony.Thomas@DHSC.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Tony Thomas, Deputy Director for Contact Tracing and Self-Isolation Policy, at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.

15.3 Sajid Javid MP, the Secretary of State for Health and Social Care, can confirm that this explanatory memorandum meets the required standard.