

**EXPLANATORY MEMORANDUM TO**  
**THE HEALTH PROTECTION (CORONAVIRUS) REGULATIONS 2020**  
**2020 No. 129**

**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 for the purpose of enabling a number of public health measures to be taken for the purpose of reducing the public health risks arising from the new strain of Wuhan novel coronavirus (2019-nCoV).

**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 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 order without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from the new strain of Wuhan novel coronavirus (2019-nCoV) and reduce the risk of it becoming more widespread in the community. The Regulations cease to have effect at the end of the period of 28 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.

*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)*

- 3.2 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 (SSHSC), Matt Hancock MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Health Protection (Coronavirus) Regulations 2020 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, 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 much of the detailed provisions to be delivered through regulations.
- 6.3 Specifically, section 45B of the 1984 Act enables the appropriate Minister (defined in section 45T as the Secretary of State for England, or the Welsh Ministers for Wales) to make regulations for preventing danger to public health from conveyances (or the persons or articles on those conveyances) arriving at any place or for preventing the spread of infection or contamination by conveyances leaving any place. It also provides a power for regulations to give effect to international agreements or arrangements, for example World Health Organisation recommendations.
- 6.4 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.
- 6.5 No regulations have been made under section 45B to date, but a number of regulations under section 45C have been made.
- 6.6 This instrument is made under section 45B and 45C to enable a number of public health measures to be taken for the purpose of reducing the public health risks arising from the virus known as Wuhan novel coronavirus (2019-nCoV) (“Coronavirus”).
- 6.7 This SI would enable the imposition of proportionate restrictions (which may include screening, isolation and other appropriate restrictions) on individuals where the SSHSC or a registered public health consultant have reasonable grounds to suspect that the individual is, or may be, contaminated with the Coronavirus. The regulations provide for a police constable to detain an individual and enforce those restrictions as required.
- 6.8 The SI also includes provision for police constables to detain individuals where they have reasonable grounds to believe an individual is, or may be, infected or contaminated with Coronavirus and are posing a risk to others. The constable is then obliged to have due regard to Public Health England guidance and consult a registered public health consultant in the exercise of their powers.
- 6.9 Finally, the SI includes provision for the SSHSC or a registered public health consultant to apply for a Part 2a order under section 45G of the existing Public Health Act 1984.

## **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 The only current legal option to enforce a quarantine period is via a Part 2A order under the Public Health (Control of Disease) Act 1984. The relevant local authority is able to file for a Part 2A order which is then made by a Justice of the Peace. The Secretary of State currently has no powers to apply for a Part 2A order, to enforce quarantine or to place appropriate restrictions on individuals outside of this process.
- 7.3 In summary, we believe there are two major reasons to introduce these new Regulations. Firstly, that it is critical for the UK Government to take all reasonable steps to limit onward transmission of the novel Coronavirus, where possible. Novel coronavirus (2019-nCoV) was recently declared by World Health Organisation a Public Health Emergency of International Concern (PHEIC). It is also essential that the Government retains public trust in its public health protection measures. This level of trust will be critical to ensuring that the public continues to engage and comply with interventions designed to protect individuals and communities if transmission of the virus within the UK increases in the coming weeks.
- 7.4 We note that there are other global precedents for these types of powers and actions. The USA, Canada, and Australia have each recently announced that they will quarantine hundreds of individuals for mandatory periods of 14 days (without giving the option of leaving or self-isolating at home), pending confirmation that they are not infectious. Each country appears to have broad powers to enable the quarantine of individuals who are or may be infectious, and to require them to comply with health requirements, on the advice of medical authorities.
- 7.5 These Regulations would apply not only in the case of any individuals seeking to leave supported isolation, but in any future cases during the current novel Coronavirus incident where an individual who may be infected or contaminated could present a risk to public health, and where there remains a realistic prospect of preventing an epidemic in the UK. In other words, if and when virus becomes established with sustained widespread transmission in the UK there would no longer be reason to apply these regulations. The regulations only come into force once SSHSC has made a public declaration that there is a serious and imminent threat to public health and the measures in the regulations would be effective in further transmission. Once this declaration is revoked, the powers in the regulations would no longer be exercisable.

## **8. European Union (Withdrawal) Act/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.

## **9. Consolidation**

9.1 Consolidation is not relevant to this instrument as it does not involve amendments to legislation.

## **10. Consultation outcome**

10.1 There has been no public consultation in relation to this instrument.

## **11. Guidance**

11.1 No guidance is published alongside this instrument at the current time.

## **12. Impact**

12.1 There is no, or no significant, impact on businesses, charities, or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there is no, or no significant, impact on businesses, charities, voluntary bodies, or the public sector.

## **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 instrument does not include a statutory review clause.

14.2 The instrument ceases to have effect at the end of the period of two years beginning on the day on which it comes into force.

## **15. Contact**

15.1 Mel Nebhrajani at the Government Legal Department (Telephone: 020 7210 0505; Email: Mel.nebhrjani@governmentlegal.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Emma Reed at the Department of Health and Social Care (Telephone: 0207 972 1031; Email: emma.reed@dhsc.gov.uk) can be contacted with any queries regarding the instrument.

15.3 Tim Baxter, Deputy Director, Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.4 Matt Hancock MP, Secretary of State for Health at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.