EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, WEARING OF FACE COVERINGS IN A RELEVANT PLACE) (ENGLAND) (AMENDMENT) (NO.2) REGULATIONS 2020

2020 No. 882

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.

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 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 Regulations came into force on 22nd August 2020 and are published on www.legislation.gov.uk. The 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 this instrument is to make amendments to the Face Coverings Regulations in order to extend and clarify the scope of these regulations by specifying further indoor premises where face coverings must be worn and additional examples of circumstances where a person would be exempt from wearing a face covering.

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) (England) (Amendment) (No 2) 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 members of the public 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 casinos, members clubs, social clubs and conference centres. Regulation 7(5) of this instrument removes funfairs, theme parks or other premises for indoor sports, leisure or adventure activities from the places that are exempt from the definition of a shop, face coverings must now be worn in these settings as a result of these amendments.

6.5 Nothing in this instrument affects the premises which the requirement to wear a face covering already apply to in accordance with the Face Coverings Regulations, as originally made. However Regulation 3(1) now includes additional exemptions for elite sportspersons, the coach of an elite sportsperson, referees, professional dancers

and professional choreographers in the relevant places, where they are either acting in the course of their employment, training or undertaking competition. An elite sportsperson and professional dancer or choreographer is defined in regulation 2(1). Additionally, there is an exemption specified for pupils at a religious school who are under the age of 19 and are undertaking education or training in a place of worship where such education or training forms part of the curriculum of the religious school.

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 Prime Minister addressed the nation on 23rd March 2020 to announce the need for further restrictions to address the Covid-19 pandemic. Regulations made on 26th March 2020 (the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (S.I. 2020/350) provided a consolidated set of the previous restrictions and closures and extended them to a longer list of businesses and premises delivering non-essential services, as well as requiring persons to stay at home by prohibiting people from leaving the place where they live except for very limited purposes (such as shopping for basic necessities, exercise, to seek medical assistance or to provide care or assistance) and banning public gatherings of more than two people.

7.3 The Prime Minister addressed the nation on 25th May 2020 to announce that some of these restrictions would be relaxed. Since 1st June outdoor markets and car show rooms have been able to reopen, subject to all premises being made COVID-secure. Furthermore, from 15th June, all other non-essential retail premises, ranging from department stores to small, independent shops, were able to reopen, subject to being COVID-secure.

7.4 As lockdown restrictions are eased, the policy aim is to give members of the public the confidence to visit public indoor spaces safely and enhance protections for those working in these settings. 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 June 15th, and since July 24th the wearing of face coverings has been mandatory in shops and supermarkets and transport hubs. On July 31st, 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 Regulations. 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 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 a range of public indoor settings such as shops, supermarkets, enclosed shopping centres, museums, galleries, indoor places of worship and transport hubs, when used alongside other measures, therefore offers a reasonable protective measure to reduce the risk of infection on contamination by a virus that presents a significant harm to public health. The Face Coverings Regulations do not apply to those working in shops, supermarkets and other places where these Regulations apply, including in the premises which this instruments inserts into the list of relevant places in the Face Coverings Regulations.

7.6 The 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/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 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 a further indoor settings 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. Furthermore, the policy will be supported by a communications campaign that will make clear that some people are exempt from these regulations and people should not be challenged by members of the public for not wearing a face covering.

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 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 Sarah Browne at the Department for Health and Social Care, Sarah.Browne@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.