

CLEARANCE CHECKLIST

Inclusion of this checklist is mandatory. Please complete the whole list and private office will remove before putting submission in the box. A submission without it will be sent back.

Note: *Contact names provided must have seen and approved the submission.*

Finance:

Does this involve any spending or affect existing budgets?

- If yes, named official:
 No

Legal:

Does this include legal risk, a court case or decisions that can be challenged in court?

- If yes, named official:
 Name
 No

Communications:

Could this generate media coverage, or a response from the health sector?

- If yes, named official:
 No

Analysis and data fact-checking:

Does this include complex data, statistics or analysis?

- If yes, named official:
 No

Devolved Administrations:

Will this affect Scotland, Wales or Northern Ireland?

- If yes, named official:
 No

Fraud:

Have you considered fraud risks?

- If yes, named official:
Click here to enter text.
 No

Commercial:

Does this include commercial or contractual implications?

- If yes, named official:
Click here to enter text.
 No

Strategy Unit:

Does this relate to cross-cutting or longer-term implications for wider DH strategy?

- If yes, named official:
 No

Implementation Unit:

Does this relate to one of the Secretary of State priorities?

- If yes, named official:
Click here to enter text.
 No

Legislation:

Does this include options that may require secondary legislation?

- If yes, do you have a prioritisation reference number? (*contact Party or SOPL if unsure*):
Party are aware of this
 No

Duties, Tests and Appraisals:

The following tests apply and have been considered.

- Secretary of State Statutory Duties, including on health inequalities
 Public Sector Equality Duty
 Family test
 Other(s) (please specify)

To: **Secretary of State**

From:

Name Redacted

Clearance: Ben Dyson
Date: 26 September 2020
Copy: Secretary of State
PO copy list

Regulations on the new legal duty to self-isolate

Issue	Regulations on the legal duty to self-isolate for people who test positive for COVID-19 and any close contacts told to self-isolate by NHS Test and Trace.
Timing	Urgent – the regulations must be made on Sunday, 27 September to enable them to come into force at midnight (00:00) Monday, 28 September.
Recommendation	<p>That you confirm you are content that the policy and laying of the Regulations is urgent and proportionate, and that you are content to sign these Regulations on Sunday 27 September to come into force on Monday, 28 September.</p> <ul style="list-style-type: none">- Under section 45R of the Public Health (Control of Disease) Act 1984 you must be 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. Our advice, detailed below, is that this urgency requirement is met. <p>That you confirm you are content to advise Parliament through a Speaker's letter that these Regulations are being made before they are laid</p> <ul style="list-style-type: none">- Under section 4(1) of the Statutory Instruments Act 1946, you are required to explain why these regulations are coming into force before they are laid. <p>That you confirm you have taken into account the equalities analysis of these regulations.</p> <ul style="list-style-type: none">- Under section 149 of the Equality Act 2010 you are required to have due regard to the impact of these proposals on those with protected characteristics (e.g. age, race, disability). An equalities analysis is attached. <p>That you agree to write to James Jamieson chair of the Local Government Association tomorrow, and to follow that up with a phone call.</p> <ul style="list-style-type: none">- A draft letter is attached

Background

1. You received advice on 25 September 2020 updating you on the key policy provisions that underpin the regulations and setting out plans for implementation – both from Monday 28 September and going forwards. You confirmed that you are content with the proposed policy and approach.
2. As announced on 20 September, it was decided that the new duty would come into effect on Monday, 28 September at midnight (00:00), therefore, laying the Regulations on Sunday 27 September. Attached to this submission are the draft Regulations and the Explanatory Memorandum for your sign off. Before you do, you must consider your legal duties under the Equality Act 2010, including the Public Sector Equality Duty that includes a Family Test Assessment – an equalities analysis is also attached.

Changes to the Regulations

3. Since you reviewed the policy yesterday the following amendments have been made to the draft regulations:

Financial Penalties

4. Yesterday you agreed the fines for individual breaches should start at £1,000 for first offence, rising to £2,000 for second offence, £4,000 for third offence and £10,000 for each subsequent offence.
5. You agreed there should be higher fines for egregious breaches. The regulations provide that, where an individual comes into close contact with others, had reason to believe they would do so and is reckless as to the consequences for the health of other people, they can receive a fine of £4,000 for a first offence and £10,000 for each subsequent offence.
6. Where an employer is found to be in breach of this obligation, they will face a fine. The regulations mirror the fines levels for individual breaches. This is in line with fines for other employer COVID breaches.
7. Since you reviewed the policy, BEIS have proposed – and Cabinet Office have agreed – a fine of £50 for people who fail to inform their employer of their legal requirement to self-isolation and a fine of £1,000 for agency employers who fail to inform an organisation to which an agency worker has been supplied.
8. The full set of fines is set out below:

1. Subject to (2), failure to self-isolate when notified to do so (positive cases, contacts of positive cases, international arrivals) Knowingly giving false information to contact tracers or not providing required information Employer or agency knowingly allowing employee or agency worker to breach self-isolation requirements	First offence	£1,000
	Second offence	£2,000
	Third offence	£4,000
	Each subsequent offence	£10,000

2. Failure to self-isolate with reckless behaviour	First offence	£4,000
	Second offence	£10,000
3. Employee failing to notify employer of self-isolation requirements	Each offence	£50
4. Agency worker's agent/principal failing to notify agency employer, or agency employer failing to notify organisation to which agency worker has been supplied, of self-isolation requirements	Each offence	£1,000

Exemptions

9. The proposed exemptions in yesterday's submission, i.e. reasons for which someone can legitimately leave the home during the self-isolation, included compassionate grounds such as attending a funeral. Having reviewed further with PHE, Cabinet Office and No.10, we do not consider it appropriate to allow someone who has COVID-19, or one of their close contacts, to attend a funeral. The regulations do not now include this exemption.
10. Although it is arguably lawful to make this change, there is a potential interference with the Article 8 ECHR right to respect for private and family life that will need to be justified as a necessary and proportionate measure for the management of Covid-19. Should this lead to a legal challenge brought on this basis, we will provide further advice as to the level of risk of success and potential impacts. There may be particular implications for those communities whose practice is to carry out a funeral as soon as possible following a death.

Are content to agree with these amendments?

Parliamentary issues

11. We have provided a draft letter for you to send to the speakers of both houses to inform them of the reasons these Regulations had to be made before they were submitted to Parliament.

Communications

12. The Prime Minister made a statement to the public and press on 20 September on the changes. We have developed a robust Q&A and are engaging with other government departments to implement a proactive communications plan. This includes reinforcing the legal duty to self-isolate and explaining why self-isolation is so important to stopping the spread of the virus. Guidance on gov.uk will also be updated to reflect the new Regulations. Details of the comms plans are being cleared with you separately.
13. MHCLG colleagues have discussed the new duty on employers and the proposed role of environmental health officers in enforcing that duty with the Local Government Association (LGA). The decision to assign the enforcement role to environmental health officers (EHOs) was made very late in the week, and there has been insufficient time to discuss in detail with local government. We and MHCLG think it important to write formally to James Jamieson (as attached) tomorrow (Sunday) and if at all possible follow up with a phone call. We are hoping to test the letter with LGA official's tomorrow morning and may come back with a revised version to take account of their views.

Legal

LPP/LAP

Conclusion

15. You are asked to:

- Agree the amendments to the draft regulations
- Sign the regulations on Sunday 27 September to come into effect on Monday 28 September at midnight.
- Confirm you have considered your duties under the Equality Act 2010, including the Public Sector Equality Duty that includes and Family Test Assessment.
- Send the attached letter to the speakers of both houses on Monday 28 September.
- Agree to write to James Jamieson, enclosing the draft regulations, on Sunday 27 September and, if possible, follow that up with a phone call.

Attachments

- Annex A: The Regulations
- Annex B: Explanatory Memorandum
- Annex C: Public Sector Equality Duty (including Family Test Assessment)
- Annex D: Speakers letter
- Annex E: Letter to James Jamieson, LGA