Draft Regulations laid before Parliament under section 45Q(2), (3) and (4) of the Public Health (Control of Disease) Act 1984 and section 150(6) of the Local Government and Housing Act 1989, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No. 000

PUBLIC HEALTH, ENGLAND

The Health Protection (Part 2A Orders) Regulations 2010

Made - - - -	*000*
Coming into force - -	*6th April 2010*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 45C(1), (2) and (3)(b), 45F(2)(a), 45G(7), 45L(4), 45M(3), (6) and (7), 45N(1) and (2)(b) and 45P(2) of the Public Health (Control of Disease) Act 1984(**1**) and section 150 of the Local Government and Housing Act 1989(**2**).

In accordance with section 152(6) of the Local Government and Housing Act 1989, the Secretary of State has consulted such representatives of local government as appear to him to be appropriate in connection with regulation 7.

A draft of this instrument has been approved by resolution of each House of Parliament pursuant to section 45Q(2), (3) and (4) of the Public Health (Control of Disease) Act 1984 and section 150(6) of the Local Government and Housing Act 1989.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Health Protection (Part 2A Orders) Regulations 2010 and shall come into force on 6th April 2010.

(2) These Regulations apply in relation to England only.

Interpretation

2. In these Regulations—

"the Act" means the Public Health (Control of Disease) Act 1984;

"child" means a person under the age of 18 years;

(**1**) 1984 c.22. *See* section 45T(6) of that Act for the definition of "the appropriate Minister" and section 45M(11) of that Act for the definition of "regulations" for the purposes of section 45M. Sections 45C, 45F, 45G, 45M, 45N, 45P and 45T were inserted into that Act by section 129 of the Health and Social Care Act 2008 (c.14).

(**2**) 1989 c.42.

"Part 2A application" means an application made to a justice of the peace for an order under Part 2A of the Act;

"Part 2A order" means an order made by a justice of the peace under Part 2A of the Act; and

"a person with parental responsibility" means a person with parental responsibility within the meaning of the Children Act 1989(**3**).

Duty on local authorities to give notice of Part 2A applications

3.—(1) This regulation applies where a local authority is making a Part 2A application.

(2) The local authority must make reasonable enquiries as to the existence and location of persons who fall within paragraphs (4) to (7) (as applicable).

(3) Having made reasonable enquiries pursuant to paragraph (2), the local authority must give notice of the application to the persons specified in paragraphs (4) to (7) (as applicable) where such persons are known to the local authority and contactable by it.

(4) In relation to an application for an order under section 45G(2) or (4) of the Act (power to order health measures in relation to persons), the persons specified are—

(a) the person subject to the application (P);

(b) a person with parental responsibility for P, if P is a child; and

(c) P's decision-maker (if any).

(5) Subject to paragraph (6), in relation to an application for an order under section 45H(2) or (4) of the Act (power to order health measures in relation to things), the persons specified are—

(a) the owner of the thing; and

(b) the person with custody or control of the thing.

(6) In relation to an application for an order under section 45H(2) of the Act in respect of a dead body or human remains, the person specified is the deceased's next of kin (or where the deceased has more than one next of kin, any one of those persons).

(7) In relation to an application for an order under section 45I(2) or (4) (power to order health measures in relation to premises), the persons specified are—

(a) the owner of the premises; and

(b) the occupier of the premises, if any.

(8) The local authority is not required to give notice under paragraph (3) where P, in the reasonable view of the local authority, is likely to abscond or otherwise take steps to undermine the order applied for.

(9) The local authority is not required to give notice under paragraph (3) to a person specified in paragraph (4)(b) where exceptional circumstances exist which mean that notifying such a person would not be in P's best interests.

(10) In this regulation—

"next of kin" means the person accorded highest rank in the following list (but if two or more persons are accorded equal ranking then each of those persons is to be treated as next of kin)—

(a) a person with parental responsibility for the deceased person (P);

(b) P's husband, wife or civil partner;

(c) a person who had been living with P up to the time of P's death as P's husband, wife or civil partner;

(**3**) 1989 c.41.

(d) P's child where aged 18 years or over;

(e) P's parent;

(f) P's brother or sister where aged 18 years or over; and

"P's decision-maker" means P's donee of enduring power of attorney or lasting power of attorney under the Mental Capacity Act 2005(**4**) or a deputy appointed by the Court of Protection(**5**) in relation to P, where decisions in connection with Part 2A applications or orders are within the scope of that person's authority.

Evidence required for a Part 2A application in relation to persons

4.—(1) A justice of the peace cannot be satisfied that the criteria in section 45G(1) or (3) of the Act (power to order health measures in relation to persons) are met unless the evidence listed in paragraph (2) is available to the justice.

(2) That evidence is—

(a) a report which gives details (insofar as known and relevant), or gives reasons for the omission of details, of—

(i) the signs and symptoms of the infection or contamination in the person (P) who is the subject of the application,

(ii) P's diagnosis,

(iii) the outcome of clinical or laboratory tests, and

(iv) P's recent contacts with, or proximity to, a source or sources of infection or contamination;

(b) a summary of the characteristics and effects of the infection or contamination which P has or may have which includes an explanation of—

(i) the mechanism by which the infection or contamination spreads,

(ii) how easily the infection or contamination spreads amongst humans, and

(iii) the impact of the infection or contamination on human health (by reference to pain, disability and the likelihood of death);

(c) in relation to applications seeking an order under section 45G(2), an assessment of the risk to human health that P presents, including a description of any acts or omissions, or anticipated acts or omissions, of P which affect that risk;

(d) in relation to applications seeking an order under section 45G(4), an assessment of the risk to human health that the related party(**6**) presents, including any acts or omissions, or anticipated acts or omissions, of the related party which affect that risk;

(e) in relation to applications seeking an order under section 45G(2), an assessment of the options available to deal with the risk that P presents; and

(f) in relation to applications seeking an order under section 45G(4), an assessment of the options available to deal with the risk that the related party presents.

(3) A report under paragraph (2)(a) must include the details mentioned in at least one of paragraphs (2)(a)(i) to (iv) .

(4) The evidence must be given by persons who are suitably qualified to give the evidence.

(5) The evidence may be given orally or in writing.

(**4**) 2005 c.9; in relation to lasting power of attorney, see section 9.
(**5**) *See* section 16 of the Mental Capacity Act 2005 (c.9).
(**6**) *See* section 45G(5) of the Public Health (Control of Disease) Act 1984 (c.22) for the definition of "related party".