

2021 No. 10

PUBLIC HEALTH

The Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Amendment) Regulations (Northern Ireland) 2021

Made - - - - *18th January 2021*

Coming into operation in accordance with regulation 1(2) and (3)

The Department of Health^(a) makes the following Regulations in exercise of the powers conferred by sections 25B and 25F(2) of the Public Health Act (Northern Ireland) 1967^(b).

Citation and commencement

1.—(1) These Regulations may be cited as the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Amendment) Regulations (Northern Ireland) 2021.

(2) Subject to paragraph (3), these Regulations come into operation at 4.00 a.m. on 21st January 2021.

(3) Regulations 6, 8(1)(a), 8(3) and 8(5) come into operation on 1st February 2021.

Interpretation

2. In these Regulations—

“common travel area” has the meaning given in section 1(3) of the Immigration Act 1971^(c);

“the principal Regulations” means the Health Protection (Coronavirus, International Travel) Regulations (Northern Ireland) 2020^(d).

PART 1

Pre-Departure Testing

Amendment of the principal Regulations

3.—(1) The principal Regulations are amended as follows.

(a) Formerly the Department of Health, Social Services and Public Safety; see 2016 c. 5 (N.I.), s. 1(5)
(b) 1967 c. 36 (N.I.). Part 1A was inserted by section 48 of, and Schedule 18 to, the Coronavirus Act 2020 (c. 7)
(c) Section 1(3) provides that the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland are collectively referred to in that Act as “the common travel area”
(d) S.R. 2020 No. 90 as amended by S.R. 2020 Nos. 138, 140, 154, 155, 163, 168, 179, 185, 189, 193, 194, 200, 203, 212, 216, 223, 228, 234, 241, 243, 244, 254, 275, 278, 289, 326, 344, and 355 and S.R. 2021 Nos. 4, 5, 6 and 9

- (2) In regulation 2(1) (interpretation)—
- (a) after the definition of “coronavirus disease”, insert—
““device” means an in vitro diagnostic medical device within the meaning given in regulation 2(1) of the Medical Devices Regulations 2002(a);”;
 - (b) after the definition of “Passenger Locator Form”, insert—
““qualifying test” means a test that is a qualifying test for the purposes of regulation 3A;”;
 - (c) after the definition of “self-isolate”, insert—
““sensitivity”, in relation to a device, means how often the device correctly generates a positive result;
“specificity”, in relation to a device, means how often the device correctly generates a negative result.”.
- (3) After regulation 3 (requirement to provide information), insert—

“Requirement to possess notification of negative test result

3A.—(1) A person who arrives in Northern Ireland having begun their journey outside the common travel area must, subject to paragraph (2), possess on arrival valid notification of a negative result from a qualifying test taken by that person.

(2) A person who is travelling with a child aged 11 or over and for whom they have responsibility must on their arrival in Northern Ireland, in the case of a person described in paragraph (1), possess valid notification of a negative result from a qualifying test taken by that child.

(3) A person who possesses valid notification of a negative result from a qualifying test must produce that notification physically or digitally, if required to do so by an immigration officer.

(4) The following persons are not required to comply with this regulation—

- (a) a child who is under the age of 11,
- (b) a person described in paragraph 2, 3, 4, 4B, 4D, 4E, 4F, 6, 11, 12 or 29 of Schedule 2,
- (c) a person described in any sub-paragraph of paragraph 3(1) of Schedule 2A.

(5) For the purposes of this regulation—

- (a) a test is a qualifying test if it complies with paragraph 1 of Schedule 2A,
- (b) a notification of a negative result is valid if it includes the information specified in paragraph 2 of Schedule 2A,
- (c) a child is to be treated as possessing valid notification of a negative result from a qualifying test taken by that child even if that notification is possessed by a person who is travelling with, and has responsibility for, that child.”.

(4) In regulation 6 (offences and penalties) —

- (a) after paragraph (1)(a), insert—
“(aa) without reasonable excuse contravenes a requirement in regulation 3A;”;
- (b) after paragraph (1)(c), insert—
“(1A) But a person does not commit an offence where they contravene a requirement in regulation 3A, if they reasonably believed at the time of the contravention that the notification of a negative result was valid and from a qualifying test.

(1B) For the purposes of paragraph (1)(aa), reasonable excuses include, in particular, where—

- (a) a person was medically unfit to provide a sample for a qualifying test and possessed a document, in English or accompanied by a certified English translation, signed by a medical practitioner entitled to practise in the country or territory in which that practitioner was based, to that effect,
- (b) it was not reasonably practicable for a person to obtain a qualifying test due to a disability,
- (c) a person required medical treatment with such urgency that obtaining a qualifying test was not reasonably practicable,
- (d) a person contracted coronavirus and required emergency medical treatment,
- (e) a person was accompanying, in order to provide support whether medical or otherwise, a person described in sub-paragraph (c) or (d) where it was not reasonably practicable for the accompanying person to obtain a qualifying test,
- (f) a person began their journey to Northern Ireland in a country or territory in which a qualifying test was not available to the public with or without payment or in which it was not reasonably practicable for a person to obtain a qualifying test due to a lack of reasonable access to a qualifying test or testing facility and it was not reasonably practicable for them to obtain a qualifying test in their last point of departure if this was different to where they began their journey,
- (g) the time it has taken a person to travel from the country or territory where they began their journey to the country or territory of their last point of departure prior to arriving in Northern Ireland meant that it was not reasonably practicable for them to meet the requirement in paragraph 1(c) of Schedule 2A, and it was not reasonably practicable for them to obtain a qualifying test in their last point of departure.”.

(5) In regulation 7 (fixed penalty notices)—

(a) after paragraph (6), insert—

“(6A) Where the fixed penalty notice is issued to a person in respect of an offence described in regulation 6(1)(aa), or regulation 6(2) where the person is believed to have wilfully obstructed any person carrying out a function in relation to regulation 3A, then the amount specified under paragraph (4)(c) must be—

- (a) in the case of the first fixed penalty notice, £500,
- (b) in the case of the second fixed penalty notice, £1,000,
- (c) in the case of the third fixed penalty notice, £2,000,
- (d) in the case of the fourth and subsequent fixed penalty notice, £4,000.”;

(b) in paragraph (11)(b), after the words “an information offence”, insert “or an offence described in regulation 6(1)(aa)”.

(6) In paragraph 4C of Schedule 2 (persons not required to comply with regulation 3 or 4), omit “in accordance with the Maritime Labour Convention, 2006 or the Work in Fishing Convention, 2007”

(7) After Schedule 2, insert—

“SCHEDULE 2A

Regulation 3A

Testing before arrival in Northern Ireland

1. A test complies with this paragraph if—

- (a) it is a test for the detection of coronavirus undertaken using a device which the manufacturer states has—

- (i) a sensitivity of at least 80%,
 - (ii) a specificity of at least 97%, and
 - (iii) a limit of detection of less than or equal to 100,000 SARS-CoV-2 copies per millilitre,
- (b) it is not a test provided or administered under the National Health Service Act 2006^(a), the National Health Services (Wales) Act 2006^(b), the National Health Service (Scotland) Act 1978^(c), or the Health and Personal Social Services (Northern Ireland) Order 1972^(d), and
- (c) the test sample is taken from the person no more than three days before—
- (i) in the case of that person travelling to Northern Ireland on a commercial transport service, the service’s scheduled time of departure, or
 - (ii) in any other case, the actual time of departure of the vessel or aircraft on which that person is travelling to Northern Ireland.
2. Notification of a negative test result must include, in English, French or Spanish, the following information—
- (a) the name of the person from whom the sample was taken,
 - (b) that person’s date of birth,
 - (c) the negative result of the test,
 - (d) the date the test sample was collected or received by the test provider,
 - (e) the name of the test provider and information sufficient to contact that provider,
 - (f) the name of the device that was used for the test.
- 3.—(1) The persons referred to in regulation 3A(4)(c) (and not required to comply with that regulation) are—
- (a) a person (“P”) described in—
 - (i) paragraph 13(1)(b) of Schedule 2 where, prior to P’s departure to the United Kingdom, the relevant Department has certified that they meet this description and are not required to comply with regulation 3A, or
 - (ii) paragraph 13A of Schedule 2 where, prior to P’s departure to the United Kingdom, the relevant Department has also certified that they are not required to comply with regulation 3A,
 - (b) a crown servant or government contractor (“C”) who is required to undertake essential policing or essential government work in the United Kingdom or is returning from conducting such work outside the United Kingdom where, prior to C’s departure to the United Kingdom, the relevant Department has certified that they meet this description and are not required to comply with regulation 3A,
 - (c) a representative (“R”) of a foreign country or territory, or of the government of a British overseas territory, travelling to the United Kingdom to conduct official business with the United Kingdom where, prior to R’s departure to the United Kingdom—
 - (i) the relevant head of the mission, consular post, or office representing a foreign territory in the United Kingdom, or a Governor of a British overseas territory (as the case may be), or a person acting on their authority, confirms in writing to the Foreign Commonwealth and Development Office that R is required to undertake work which is essential to the foreign country

(a) 2006 c. 41
 (b) 2006 c. 42
 (c) 1978 c. 29
 (d) S.I. 1972/1265 (N.I. 14)

represented by the mission or consular post, the foreign territory represented by the office or the British overseas territory, and

(ii) the Foreign Commonwealth and Development Office has then confirmed in writing to the person giving the notification in sub-paragraph (i) that—

(aa) it has received that confirmation, and

(bb) R is travelling to the United Kingdom to conduct official business with the United Kingdom and is not required to comply with regulation 3A,

(d) a worker with specialist technical skills, where those specialist technical skills are required for emergency works or services (including commissioning, maintenance, and repairs and safety checks) to ensure the continued production, supply, movement, manufacture, storage or preservation of goods or services, where they have travelled to the United Kingdom in the course of their work or otherwise to commence or resume their work.

(2) In sub-paragraph (1)—

“consular post” has the meaning given in paragraph 1(3) of Schedule 2;

“Crown servant”, “essential government work”, “essential policing” and “government contractor” have the meaning given in paragraph 13(2) of Schedule 2.”.

Transitional and saving provision

4. The principal Regulations as if the amendments made by regulation 3, except for the amendment made by regulation 3(6), had not been made in relation to any person who arrives in Northern Ireland before 4.00 a.m. on 21st January 2021.

PART 2

Operator liability in respect of arrivals

Interpretation of Part 2

5. In this Part—

“child” means a person under the age of 18;

“immigration officer” means a person appointed by the Secretary of State as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971(a);

“operator” means operator of a commercial transport service;

“passenger” means a person travelling on a conveyance who is not a member of the conveyance’s crew;

“Passenger Locator Form” has the meaning given in regulation 2(1) of the principal Regulations;

“port” means any port (including a seaport, airport or heliport);

“qualifying test” means a test that is a qualifying test for the purposes of regulation 3A of the principal Regulations;

“relevant passenger” means a passenger who fails, without reasonable excuse—

(a) to provide evidence of having provided passenger information when requested to do so by an immigration officer pursuant to regulation 3(7) of the principal Regulations; or

(b) to produce a required notification when requested to do so by an immigration officer pursuant to regulation 3A(4) of the principal Regulations;

(a) 1971 c. 77. Paragraph 1 was amended by paragraph 3 of Schedule 3 to the Health Protection Agency Act 2004 (c. 17), and by S.I. 1993/1813

“relevant service” means a commercial transport service carrying passengers travelling to Northern Ireland from outside the common travel area;

“required notification” means a valid notification of a negative test result from a qualifying test for the purposes of regulation 3A of the principal Regulations—

- (a) taken by the person in possession of that notification, or
- (b) taken by a child and treated as being in their possession by virtue of paragraph (5)(c) of that regulation;

“the requirement to possess notification of a negative test result” means the requirement in regulation 3A(1) of the principal Regulations;

“the requirement to provide information” means the requirement in regulation 3(1) of the principal Regulations;

“responsible individual” means an individual who—

- (a) has custody or charge of the child for the time being, or
- (b) has parental responsibility for the child within the meaning given in article 6 of the Children (Northern Ireland) Order 1995(a).

Requirement to ensure passengers have completed a Passenger Locator Form

6.—(1) An operator must ensure that a passenger who arrives at a port in Northern Ireland on a relevant service has completed a Passenger Locator Form.

(2) Paragraph (1) does not apply in relation to a passenger—

- (a) whom the operator, or a person acting on behalf of the operator, reasonably believes is not required to comply with the requirement to provide information;
- (b) who informs the operator, or a person acting on behalf of the operator, that they have a disability which prevents them from completing a Passenger Locator Form; or
- (c) who is a child, travelling without a responsible individual.

Requirement to ensure passengers possess notification of negative test result

7.—(1) An operator must ensure that a passenger who arrives at a port in Northern Ireland on a relevant service is in possession of a required notification.

(2) Paragraph (1) does not apply in relation to a passenger—

- (a) whom the operator, or a person acting on behalf of the operator, reasonably believes is not required to comply with the requirement to possess notification of a negative test result or has a reasonable excuse for failing to comply with that requirement;
- (b) who is a child, travelling without a responsible individual; or
- (c) who is a transit passenger who does not have the right to enter the country or territory from which the relevant service departs.

(3) In this regulation, “transit passenger” means a person who has arrived in the country or territory from which the relevant service departs with the intention of passing through to Northern Ireland without entering that country or territory.

Offences

8.—(1) An operator who fails to comply with the requirement in—

- (a) regulation 6(1), or
- (b) regulation 7(1),

(a) S.I. 1995/755 (N.I. 2)

commits an offence.

(2) An offence under paragraph (1) is punishable on summary conviction by a fine not exceeding £10,000.

(3) In relation to the offence in paragraph (1)(a), it is a defence for an operator to show that they recorded a unique passenger reference number for the relevant passenger before that passenger boarded the relevant service.

(4) In relation to the offence in paragraph (1)(b), it is a defence for an operator to show that the relevant passenger presented a document purporting to be a required notification which the operator, or a person acting on behalf of the operator, could not reasonably have been expected to know was not a required notification.

(5) In this regulation, “unique passenger reference number” means a reference number which has been provided by or on behalf of the relevant passenger and which includes the letters “UKVI” followed immediately by an underscore and thirteen alphanumeric characters.

Power to use and disclose information

9.—(1) This regulation applies to any person (“P”) who holds information described in paragraph (2) relating to a relevant passenger (“relevant information”).

(2) The information referred to in paragraph (1) is—

- (a) information provided by, or on behalf of, the relevant passenger by way of explanation for failing to comply with regulation 3 or 3A of the principal Regulations,
- (b) information about the steps taken, pursuant to the principal Regulations, in relation to the relevant passenger, including details of any fixed penalty notice issued under those Regulations,
- (c) personal details of the relevant passenger, including their—
 - (i) full name,
 - (ii) date of birth,
 - (iii) passport number, or travel document reference number (as appropriate), issue and expiry dates and issuing authority,
 - (iv) home address,
 - (v) telephone number,
 - (vi) email address,
- (d) journey details of the relevant passenger, including—
 - (i) their time and date of arrival in Northern Ireland,
 - (ii) the name of the operator of the relevant service on which they arrived or through which their booking was made,
 - (iii) their coach number,
 - (iv) the flight number or vessel name,
 - (v) the departure and arrival locations of the relevant service.

(3) P may only use relevant information where it is necessary for the purpose of carrying out a function under these Regulations.

(4) P may only disclose relevant information to another person (“the recipient”) where it is necessary for the recipient to have the relevant information for the purpose of carrying out a function under these Regulations.

(5) This regulation does not limit the circumstances in which information may otherwise lawfully be disclosed under any other enactment or rule of law.

(6) Nothing in this regulation authorises the use or disclosure of personal data where doing so contravenes the data protection legislation.

(7) For the purposes of this regulation “data protection legislation” and “personal data” have the same meanings as in section 3 of the Data Protection Act 2018^(a).

Review

10. The Department of Health must review the need for the requirements imposed by regulations 6 and 7 of these Regulations as part of the reviews conducted as required by the principal Regulations.

Expiry

11.—(1) This Part expires at the end of 7th June 2021.

(2) The expiry of this Part does not affect the validity of anything done pursuant to these Regulations before it expires.

Sealed with the Official Seal of the Department of Health on 18th January 2021

(L.S.)

Robin Swann
Minister of Health

(a) 2018 c. 12

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 1 of these Regulations amends the Health Protection (Coronavirus, International Travel) Regulations (Northern Ireland) 2020 (S.R. 2020 No. 90) to introduce a requirement for persons travelling to Northern Ireland from outside the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland (the “common travel area” by virtue of section 1(3) of the Immigration Act 1971 (c. 77)) to possess a notification of a negative coronavirus test upon arrival in Northern Ireland.

Part 2 of these Regulations introduces requirements for persons operating commercial transport services (“operators”) for passengers travelling to Northern Ireland from outside the common travel area to ensure that passengers who arrive in Northern Ireland on such services have completed a Passenger Locator Form (regulation 6(1)) and possess notification of a negative test result (regulation 7(1)). Breach of the requirements is an offence (regulation 8(1)).

Upon completion of the Passenger Locator Form, passengers receive a unique passenger reference number from the Home Office. An operator who has recorded a unique passenger reference number in the format used by the Home Office will have a defence to the offence in regulation 8(1)(a) (regulation 8(3)).

No impact assessment has been prepared for these Regulations

© Crown copyright 2021

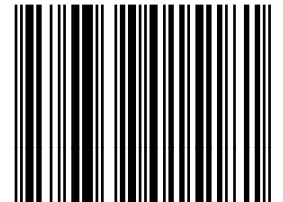
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty’s Stationery Office being the Government Printer for Northern Ireland and the Officer appointed to print Acts of the Northern Ireland Assembly.

£6.90

NI202101181000 01/2021 19585

<http://www.legislation.gov.uk/id/nisr/2021/10>

ISBN 978-0-33-801518-1



9 780338 015181