

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL
AND OPERATOR LIABILITY) (ENGLAND) (AMENDMENT) (NO. 12) 2021

2021 No. 1066

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (DHSC) 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 amends the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 (S.I. 2021/582) (“the Regulations”) to:
 - 2.1.1 Update the list of Category 3 countries and territories referred to colloquially and in guidance as the “Red List”;
 - 2.1.2 Extend the scope of the existing exemption to include two international events namely the Global Investment Summit and the Foreign, Commonwealth and Development Office (FCDO) conference on Security Sector Reform in Libya;
 - 2.1.3 Introduce an exemption for officials of a foreign Government who are required to travel to the United Kingdom from an Amber or Red List country to undertake policing activity that is essential to their Government;
 - 2.1.4 Introduce an exemption from self-isolation for performing arts professionals;
 - 2.1.5 Introduce an exemption for individuals involved in film and high-end TV production;
 - 2.1.6 Introduce a modified self-isolation scheme for seasonal poultry workers arriving from Amber List countries;
 - 2.1.7 Remove the managed quarantine exemption currently applying to road hauliers travelling from or through Turkey when they arrive in England;
 - 2.1.8 Update the list of countries that prohibit passenger aircraft landing in England from Red List countries with scheduled direct passenger flights to England;
 - 2.1.9 Update the list of countries from which there is a direct vessel ban into England;
 - 2.1.10 Introduce an exemption from self-isolation requirements to allow Kenyan and Ethiopian international elite runners and their essential ancillary support to participate in the Virgin London Marathon;
 - 2.1.11 Update the list of sports under Schedule 5 to reflect new upcoming sporting fixtures;
 - 2.1.12 Amend the existing UN Climate Change Conference (COP 26) exemption to change the correspondence requirements for registered participants;

- 2.1.13 Introduce a new obligation on the entire household to self-isolate in relation to persons exempt from entering into managed quarantine and permitted to self-isolate elsewhere;
- 2.1.14 Update the definition of fully vaccinated to include individuals who have received mixed doses (at present this only applies for vaccinations authorised by the Medicines and Healthcare products Regulatory Agency (MHRA), European Medicines Agency (EMA), US Food and Drug Administration (FDA) and Swissmedic);
- 2.1.15 Introduce a new standard for Day 2 and Day 8 testing;
- 2.1.16 Remove bus and coach drivers from the requirement to undertake a pre-departure test, Day 2 and Day 8 tests and move them into the bespoke workforce testing regime;
- 2.1.17 Exempt cruise passengers who enter the UK only for a short excursion of less than 48 hours from Day 2 testing;
- 2.1.18 Introduce a reasonable excuse to allow cruise passengers who test positive on board cruise ships to be transported to England without criminal liability for either the passenger or the operator;
- 2.1.19 Introduce an exemption from Pre-Departure Testing and completing the Passenger Locator Form (PLF) for those on cruise ships in an English port but that do not disembark into England at any point;
- 2.1.20 Enable cruise passengers to complete a PLF up to 21 days before arrival in England;
- 2.1.21 Introduce a new Pre-Departure Testing and self-isolation exemption for haulier outreach workers deployed on ferries between the UK and France, the Netherlands and Spain.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 DHSC regrets that this instrument breaches the rule that statutory instruments subject to the negative procedure should normally be laid, and copies provided to the Committee, 21 days before the instrument comes into force (“the 21-day rule”). Having reviewed the latest assessments of public health risk and the impact of vaccinations on transmission, the Government considers these measures are urgently necessary to protect public health whilst ensuring that restrictions in place remain proportionate.

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 only.

5. European Convention on Human Rights

- 5.1 As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The legislative context is set out in paragraphs 7.1 to 7.4 of the [explanatory memorandum to the Regulations](#) published on www.legislation.gov.uk.

7. Policy background

What is being done and why?

- 7.1 This amending instrument updates the Regulations to limit the risk of importation of harmful variants of COVID-19 from destinations where there is a higher incidence, in line with the latest epidemiological data.
- 7.2 Additionally, this instrument introduces and amends a number of exemptions for specified categories of individuals and events of national importance in the UK to allow the events to be successfully delivered whilst robustly protecting public health.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.3 The Regulations came into force on 17 May 2021 to deliver a package of enhanced border measures in response to the risk of importation of harmful variants of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) (COVID-19) in England. This included setting out the requirement for persons returning from foreign countries or territories to self-isolate upon arrival in England if, within the 10 days preceding their arrival, they have been to or made a transit stop in a category 2 (“Amber List”) country/territory. This also includes the requirement to take, and show the negative result of, a pre-departure, Day 2 and Day 8 COVID-19 test from a private provider. For areas where this risk is especially elevated, the Regulations require individuals to book a managed quarantine hotel package. The Regulations also include a number of exemptions for a small proportion of people. This includes people travelling to the UK to maintain essential supply and business chains, critical national infrastructure or to contribute to crisis response or other key sectors, known as “sector exemptions”. The Regulations also reflect the positive impact of global vaccination programmes on transmission risk, whilst ensuring that provisions remain proportionate, in line with the latest epidemiological data.

Why is it being changed?

- 7.4 The list of countries and territories are being updated to limit the risk of importation of harmful variants of COVID-19 from destinations where there is a higher incidence. The revisions to the country listing reflect the latest epidemiological data following the recent three-weekly RAG review.
- 7.5 Arising out of changes to the Red List is the need for three further changes:
1. Removing the exemption from managed quarantine applying to road hauliers travelling from or through Turkey when they arrive in England. Hauliers will continue to be required to adhere to the Amber restrictions including bespoke workplace testing and in-cab self-isolation for non-UK resident hauliers;
 2. Removing Turkey from the list of countries from which there is a direct vessel ban into England; and
 3. Removing Bangladesh, Egypt, Kenya, the Maldives, Oman, Pakistan, Turkey and Sri Lanka from the list of countries in the Regulations that prohibits passenger

aircraft landing in England from red list countries with scheduled direct passenger flights to England.

- 7.6 This instrument introduces the following legal requirements where anyone exempt from quarantining at a Managed Quarantine Facility under paragraph 18(2)(ix) and (3)-(6) in Schedule 11, is permitted to quarantine at their eventual destination (including unaccompanied minors):
- 7.6.1 For the exempt individual to provide the names of all the people who reside in the same accommodation at that destination;
 - 7.6.2 For all individuals notified by the Secretary of State and residing in the same accommodation to self-isolate for the same amount of time as the exempt person; and
 - 7.6.3 A requirement on employers of those who have to self-isolate not to knowingly allow them to be outside of that accommodation for the purposes of their employment.
- 7.7 This will mitigate the risk that household members of a Managed Quarantine Service (MQS) exempt individual will catch and spread a Variant of Concern from the traveller and introduce it to the community, through limiting their ability to come and go from their shared home.
- 7.8 This instrument introduces a new standard for Day 2 and Day 8 testing for international arrivals. This will create an obligation for a diagnostic laboratory to secure that where they transfer a positive sample for the purpose of genome sequencing, the positive sample is received at the sequencing laboratory within 24 hours of the positive PCR result being called. A failure to comply with this requirement, without reasonable excuse, would be an offence, punishable on summary conviction by a fine. These changes are being made to improve the testing mechanisms for a positive PCR test and ensure they are sent for genomic sequencing to identify any Variants of Concern or any Variants Under Investigation, in a timely manner, in the interests of Public Health.
- 7.9 This instrument updates a number of existing exemptions to ensure that they remain effective and proportionate. It updates the definition of fully vaccinated to allow international arrivals who have received ‘mixed’ vaccine doses to qualify for relaxed inbound travel measures if they are arriving from an amber list country. An individual has received a set of ‘mixed’ doses if they have had two vaccine doses where the vaccines administered are not all manufactured by the same brand and/or authorised by the same regulator (at present this only applies for vaccinations authorised by MHRA, EMA, FDA and Swissmedic). These individuals are deemed to have sufficient protection from COVID-19 to qualify for the same relaxation of travel measures available to other fully vaccinated international arrivals.
- 7.10 This instrument updates the existing COP 26 exemption to amend the definition of “relevant person” in Schedule 4 for registered participants for the COP 26 so that correspondence to confirm health protocol compliance and application of the relevant exemption is with the individual (rather than the head of the relevant mission or consular post, the office representing the foreign territory in the United Kingdom or the relevant organisation).
- 7.11 This instrument also introduces a number of specific exemptions for events of national importance in the UK to allow the events to be successfully delivered whilst robustly protecting public health.

- 7.12 This instrument introduces two new events to the existing exemption for specified international events hosted by the UK government namely the Global Investment Summit and the FCDO Conference on Security Sector Reform in Libya. This will expand the scope of the existing exemption category to include these events and is required in order to ensure the in-person attendance of States, foreign territories and organisations at events hosted or co-hosted by HMG. These events will amplify HMG's international priorities. The successful delivery of HMG policy priorities is dependent on our ability to exempt individuals coming to the UK to attend or facilitate these events. The Pre-Departure Testing requirement will remain in place. Exempted persons may be subjected to an additional testing regime and other health protocols (e.g. social distancing) subject to Public Health England (PHE) advice. FCDO and the Department for International Trade (DIT) will be responsible for deciding who should be invited to the respective events and will need to confirm the exemptions for those persons, to help ensure that the use of the exemption is tightly controlled. Individuals under this category will be exempt from:
- Completing the Passenger Locator Form
 - Self-isolation
 - Managed Quarantine Service
 - Day 2 and Day 8 testing
- 7.13 This instrument introduces amendments to bring Schedule 5 of the Regulations up to date, by removing sporting events which have already taken place and adding events which have been authorised to take place later in the year.
- 7.14 This instrument introduces amendments to add the 'Virgin London Marathon' (taking place 3 October) to the list of elite sports events in Schedule 11. Schedule 11 lists events where participating elite sportspersons and ancillary sportspersons are exempt from Red List restrictions, under enhanced protocols. This would allow the Kenyan and Ethiopian international elite runners and their essential ancillary support (a total of 40 people) participating in the event to benefit from Red List exemptions.
- 7.15 This instrument also introduces exemptions for certain individuals carrying out specific cultural activities. This includes a self-isolation exemption for performing arts and cultural professionals returning to England from professional activity abroad, and to international artists and cultural professionals travelling into England. The existing list of self-isolation exemptions are sector specific and therefore do not capture performing art professionals. This exemption will be verified by the Arts Council England following a strict criterion and cover talent from outside the EU and the US specifically from Asia, Russia and Ukraine. The inbound vaccination policy currently would not apply to those exempt due to the use of vaccines not authorised in the UK. This exemption will be for self-isolation only, eligible individuals will still be required to self-isolate when not undertaking the exempt activity.
- 7.16 This instrument introduces a self-isolation exemption for Film and High-End TV professionals. This will allow international cast and crew not covered by current exemptions to arrive at the UK to work on eligible productions. This exemption will be for self-isolation only, eligible individuals will still be required to self-isolate when not working.
- 7.17 This instrument introduces an exemption for officials of a foreign Government who are required to travel to the United Kingdom from an Amber or Red List country to undertake policing activity that is essential to their Government. Eligible individuals

will be exempt from self-isolation requirements when arriving from an amber list country and permitted to self-isolate if arriving from a red-list country (rather than entering MQS). Individuals will still be required to isolate when not performing the exempt activity. Whilst the seriousness and complexity of Mutual Legal Assistance requests from other countries frequently mean that non-UK officers ask to be present in the UK, existing provisions do not allow it.

- 7.18 This instrument introduces an exemption to cover specified activities relating to the catching, slaughtering and processing of poultry for the 2021 Christmas market. This exemption will apply from October to December 2021 inclusive to cover seasonal poultry workers arriving from amber list countries, mainly from Romania, Bulgaria, Poland, Hungary, Czech Republic, Slovakia and Slovenia. Poultry Workers arriving from amber list countries who are not eligible Category 2 arrivals will be required to self-isolate with people living or working with them at a specified farm or premises. The self-isolation requirement is modified rather than dis-applied, so as to create a self-isolation “bubble”. Eligible individuals will be exempt from Day 2 and Day 8 test requirements and instead, like seasonal agricultural workers, will be subject to the bespoke testing regime in regulation 7.
- 7.19 This instrument introduces a new exemption for haulier outreach workers deployed on ferries between the UK and France, the Netherlands and Spain. This will apply to government contractors who provide information and advice to hauliers on new processes and procedures regarding the introduction of new UK import controls. This exemption will mean workers are:
- Exempt from PDT
 - Exempt from self-isolation if UK resident
 - Required to self-isolate when not working if non-UK resident
 - Required to undertake bespoke workplace testing.
- 7.20 This instrument contains a number of measures relating to cruises. This instrument updates the Regulations to ensure that passengers and crew who are on board cruise ships in an English port, but at no point disembark into England, are not required to complete the Passenger Locator Form, take a Pre-Departure Test or self-isolate. This will bring into scope those workers who provide information and advice on the post-transition arrangements for the carriage of goods. They will be working on board vessels but will not disembark on arrival at European ports.
- 7.21 This instrument introduces a reasonable excuse to allow a cruise passenger who has tested positive after taking a Pre-Departure Test on board prior to arrival, in line with PHE approved protocols, to be transported to England without criminal liability for either the passenger or the operator. At present, carriers (including cruise operators) commit a criminal offence if they transport passengers without a negative Pre-Departure Test to England, incentivising them to deny such passengers boarding. However, this conflicts with the cruise industry’s COVID-19 Framework, approved by PHE, which covers the safe return of UK residents who test positive for COVID-19 on board. At present, passengers who arrive in England without proof of a negative PDT also commit an offence. This amending instrument will resolve this conflict in order to allow operators and port health authorities to handle outbreaks appropriately and to ensure the best possible public health outcome.
- 7.22 This instrument exempts cruise passengers who enter the UK only for a short excursion of less than 48 hours from Day 2 testing. This is because these passengers will not be

in the country to take a Day 2 test and will leave after their excursion. In addition, cruise operators have put in place regular testing as part of their wider Covid-19 protocols to enable cruise restart offering a further level of assurance that cases will be identified.

- 7.23 This instrument allows cruise passengers to submit their passenger locator form (PLF) up to 21 days before arrival. This will enable the majority of cruise passengers to submit the PLF before boarding the vessel. Without this change, operators would not be able to check PLFs before boarding and there would be significant technical challenges completing the PLF on board which would make it challenging for passengers to comply with the current PLF requirements.
- 7.24 This instrument updates the Regulations to remove bus and coach drivers from the requirement to undertake a Pre-Departure Test, Day 2 and Day 8 tests and move them into the bespoke workplace testing regime. This amendment seeks to rectify an existing disparity in the Regulations between transport workers, as bus and coach drivers of international tours are not currently under the same testing regimes as all other transport workers.
- 7.25 This instrument also makes minor and technical amendments to:
- 7.25.1 Remove paragraph 1(1)(f) of Schedule 4, the existing exemption for representatives at an international or United Kingdom conference who is granted privileges and immunities in the United Kingdom;
- 7.25.2 Correct paragraph 9 of Schedule 8 which includes a reference to Public Health England which was not captured by The Public Health England (Dissolution) (Consequential Amendments) Regulations 2021 (SI 974/2021);
- 7.25.3 Amend the amount of the fixed penalty notice for a breach of the requirement on a responsible adult to quarantine in the same place as an unaccompanied child in line with other breaches of the quarantine requirement in Schedule 11;
- 7.25.4 Correct an oversight in the COP26 provisions inserted by SI 2021/966 which neglected to require that COP26 participants who are required to undertake mandatory testing under the International Travel Regulation and who test positive for COVID-19 would be required to self-isolate; and
- 7.25.5 Correct typing errors and other drafting errors of that type in the International Travel Regulations.
- 7.26 Accordingly, the free issue procedure has been applied to this instrument.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 This instrument does not consolidate any legislation and there are no plans to do so at this time.

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 in relation to COVID-19 at <http://www.gov.uk/coronavirus> and this guidance will include any updated information in relation to these amendments.

12. Impact

- 12.1 An Impact Assessment has not been prepared for this instrument because it is a temporary measure which is part of the Government's response to COVID-19. As the Regulations, which this instrument amends, will cease to have effect on 16 May 2022 a Regulatory Impact Assessment is not required and would be disproportionate.

13. Regulating small business

- 13.1 This instrument applies to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The Secretary of State must review the need for the requirements imposed by the Regulations, which this instrument amends, at least every 28 days as a result of a statutory review clause.

15. Contact

- 15.1 Jessica Sterling at the Department of Health and Social Care, Email: Jessica.Sterling@dhsc.gov.uk can be contacted with any queries regarding this instrument.
- 15.2 Sarah Nelson, Deputy Director for Managed Quarantine Service, at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.
- 15.3 The Rt. Hon. Sajid Javid MP, the Secretary of State at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.