

EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (ENGLAND) (AMENDMENT) (NO. 13) REGULATIONS 2021

2021 No. 1107

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 implement changes to border requirements by removing all category 1 countries and moving to requirements based on whether a person is a red list arrival or a non-red list arrival. For non-red list arrivals, requirements will depend on whether a person meets the requirement to be an eligible traveller which is linked to vaccination status. The “eligible traveller” category will also be expanded to include individuals vaccinated in a larger list of countries and the pre-departure test requirement removed for this category of individuals. The instrument removes the obligation for operators to check for evidence where a person is a verified eligible traveller, removes redundant events exemptions and amends the medical evidence that is required for a medical exemption from managed quarantine.

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 Part 2A of the Public Health (Control of Disease) Act 1984 provides a legislative framework for health protection in England and Wales. Section 45B(1) enables the appropriate Minister (defined in section 45T as, for England, the Secretary of State) to make regulations for preventing danger to public health from vessels, aircraft, trains or other conveyances arriving at any place and preventing the spread of infection or contamination by means of any vessel, aircraft, train or other conveyance leaving any place. Section 45P(2) provides that the power to make regulations includes the power to make different provision for different cases or areas. Section 45F makes supplementary provision relating to regulations made under section 45B - they may include provisions relating to the conferral of functions, creation of offences, the execution and enforcement of restrictions and requirements imposed by the regulations and the levy of charges.
- 6.2 The Secretary of State made The Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 7) Regulations 2021 on 12 February, which came into force on 15 February. The Health Protection (Coronavirus, International Travel) (England) Regulations 2020 were due to expire on 2 June 2021. They have now been replaced by The Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 (“the Regulations”) which came into force on 17 May.

7. Policy background

What is being done and why?

- 7.1 This instrument updates the Regulations to take advantage of the high vaccination rates amongst the UK adult population, along with the increasing evidence of vaccine efficacy overseas, to further facilitate international travel from non-red list countries. This policy will bring the UK in line with a number of other international travel hubs – particularly in Europe – to facilitate family reconnections, holidays and business travel. It will reduce the costs associated with the travel system and make it less complex to navigate.
- 7.2 Stringent public health measures equivalent to those that currently apply to category 3 arrivals, including managed quarantine, will be retained for arrivals from red list countries. The purpose of this is to mitigate the risk of VoC transmission into the community from high-risk travellers. This is considered proportionate because the highest risk to the UK’s economic, social and health recovery from the pandemic comes from the widespread incursion of a SARS-COV-2 variant that shows vaccine escape.
- 7.3 Additionally, this instrument amends a number of exemptions to ensure that they remain effective and proportionate, in line with public health aims.

This instrument amends the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 (S.I. 2021/582) (“the Regulations”) to:

- 7.4 Remove all category 1 countries from the list in Schedule 1. There will now be a red list (still referred to in the Regulations as “category 3”), and border measures for travellers from the rest of the world will depend upon the vaccination status of the traveller and the country in which they received their vaccination. There will be no

amendments to the red list in this set of regulations but there will be a further review of the country classification in the week commencing 4th October.

- 7.5 Amend the Regulations to differentiate between the borders measures applicable to eligible travellers and the borders measures applicable to all other arrivals from non-red list countries:
- the measures in Parts 1 and 1A will apply to all passengers;
 - the measures in Part 1B will apply to eligible travellers;
 - the measures in Parts 2 and 3 will apply to other travellers.
- 7.6 Create a category of “eligible traveller”. This will be a person arriving in England who has not been in a red list country in the last 10 days and who falls into one of the following groups:
- individuals who have completed a course of doses of one of the following, with the final dose having been received at least 14 days prior to arrival in England:
 - A vaccine authorised by the Medicines and Healthcare products Regulatory Authority (MHRA) on the date that the relevant provision comes into force and administered in the UK or under the UK vaccine roll-out overseas.
 - A vaccine authorised by any of the 11 regulators listed by World Health Organisation (WHO) in their Joint Statement on the Equal Recognition of Vaccines on the date that the relevant provision comes into force administered in the EU, Andorra, Iceland, Liechtenstein, Monaco, Norway, San Marino, The Vatican City State, Switzerland, the USA (where ordinarily resident in the USA), Australia or Canada.
 - A vaccine which is the same brand as those authorised by the MHRA in the UK on the date that the relevant provision comes into force and from the same manufacturer as those approved in the UK, if received in Antigua and Barbuda, Bahrain, Barbados, Brunei, Dominica, Israel, Japan, Kuwait, Malaysia, New Zealand, Qatar, Saudi Arabia, Singapore, South Korea, Taiwan or the UAE. This cohort will need to show evidence of vaccination by way of a certificate containing prescribed information.
 - past and present participants in a formally recognised clinical vaccine trial in the UK or the USA (where ordinarily resident in the USA) who can prove that participation;
 - an English resident who can show through their NHS Covid Pass that a registered medical practitioner has advised that they should not be vaccinated for clinical reasons;
 - a person under the age of 18 years who lives in one of the countries where vaccination is accepted under the Regulations.
- 7.7 Introduce a requirement that Eligible travellers evidence their vaccination status either through the NHS Covid pass, the EU Digital Covid Certificate, the CDC vaccination card (for UK, EU and USA vaccinations respectively) or with a vaccine certificate which meets the following minimum requirements for all other relevant countries:
- Written in English, French or Spanish;
 - Includes the traveller’s full name;

- Their date of birth;
 - The name and manufacturer of the vaccine that they received;
 - The date that they received each dose of the vaccine;
 - Details of either the identity of the issuer of the certificate or the country of vaccination.
- 7.8 Ensure that Eligible travellers are required to provide passenger information and undertake a mandatory day 2 test within the meaning of regulation 6, unless the worker testing regime applies to them. They will not have to provide a notification of a negative result from a pre-departure test and will not have to isolate after arrival (unless the result of their day 2 test requires them to isolate).
- 7.9 All other arrivals from non-red list countries (unless otherwise exempt) will continue to be required to:
- provide passenger information;
 - provide a notification of a negative result from a pre-departure test;
 - undertake mandatory or worker testing;
 - isolate after arrival.
- 7.10 The instrument makes a number of consequential amendments throughout the Regulations to update references to “red”, “amber”, “green”, “category 1” and “eligible category 2 arrival”.
- 7.11 Remove the obligation on operators to check evidence of vaccination status for verified eligible travellers (an eligible traveller whose passenger locator form indicated that their vaccine status is verified). The eligible traveller will prove their vaccine status by scanning a QR code from the NHS app when filling in the PLF.
- 7.12 Remove the exemption in Schedule 4 for the Global Education Summit and London Fashion Week which are no longer necessary as the events have taken place.
- 7.13 Amend the test set out in paragraph 18(4) of Schedule 11 to be granted a medical exemption from managed quarantine. The medical evidence that a person must provide in support of their application must now include details of (a) the support the person would reasonably require in order to manage their medical or health condition if they were required to self-isolate in designated accommodation, and (b) the probable impact to their health if that support was not provided.
- 7.14 Replace the specified information for passengers in Schedule 12.
- 7.15 Correct two minor errors identified in the Regulations: an erroneous cross-reference, and a failure to insert a necessary cross-reference due to oversight in a previous amending instrument. Accordingly the free issue procedure applies.

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

- 7.16 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) in England. This included setting out the requirement for persons returning from 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 test from a private provider. People who were fully vaccinated

having received their vaccination in the UK, the EU or USA (and being ordinarily resident in the USA) were exempt from the requirement to self-isolate and take the Day 8 COVID test. For areas where this risk is especially elevated, category 3 countries, 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”.

Why is it being changed?

- 7.17 The instrument will alter the current 3-category country risk allocation system to implement a new system centred around one red list (still referred to in the Regulations as “category 3”), and border measures for travellers from the rest of the world will depend upon the vaccination status of the traveller. The purpose of implementing this new system for international arrivals is to provide a clearer set of rules for non red list arrivals which are determined by a traveller’s vaccination status rather than the country they arrive from. The overarching justification of this change is the progress of the COVID-19 vaccination rollout both domestically and globally. High vaccination rates in our population are effective at reducing infection and onward transmission for non-vaccine escaping variants. Given that double vaccinated individuals are themselves safer, and offer a 50-80% reduced risk of transmission, it is proportionate that these individuals should not be required to isolate at home or undertake unnecessary medical testing, at cost, when arriving from non-red list countries and territories. This expansion therefore aims to minimise the imposition of restrictions on individuals to reflect the positive impact of vaccination on transmission to ensure that the provisions remain proportionate. Merging the traffic light system, with a clear focus on vaccination status, will also help to simplify the approach in a way that makes easier to understand and comply with – an ONS insights survey on 6 June found that only 54.32% of respondents completely understood travel requirements. Country classifications will remain rooted in public health protections and continue to limit the risk of importation of harmful variants of Covid-19 from destinations where there is a higher incidence. Country classifications will also continue to be subject to a three-weekly review.
- 7.18 Following the successful expansion of the fully vaccinated exemption to eligible individuals vaccinated in the US and EU27 on 2nd August, this instrument expands the “eligible traveller” category to include individuals vaccinated in a larger list of countries. These travellers will not be required to self-isolate and will only be required to take a day 2 test, provided that they have not been in a red list country in the last 10 days. Individuals must have received a full course of doses of a vaccine meeting the requirements set out in paragraph 7.6 and have received their final dose at least 14 days prior to arrival in England. This instrument also updates the accepted forms of evidence in regards to vaccination status. This is the next step in the phased approach for lifting travel restrictions where there is low risk of transmission due to vaccination. The overarching justification of this expansion is the progress of the COVID-19 vaccination rollout both domestically and globally. High vaccination rates in our population are effective at reducing infection and onward transmission for non-vaccine escaping variants. Given that double vaccinated individuals are themselves safer, and offer a 50-80% reduced risk of transmission, it is proportionate that these individuals should not be required to isolate at home or undertake unnecessary medical testing, at cost, when arriving from non-red list countries and territories. This

expansion therefore aims to minimise the imposition of restrictions on individuals to reflect the positive impact of the vaccination on transmission to ensure that the provisions remain proportionate. Individuals subject to the vaccine relaxation will still be required to fill in the Passenger Locator Form and take a Day 2 PCR test.

- 7.19 As a result of this instrument, “eligible travellers” will no longer be required to take a pre-departure test within 72 hours of arrival in England. The purpose of this change is to facilitate international travel by simplifying travel measures for travellers from non-red list countries and reducing burdens on travellers and the travel sector. This reduction in testing requirements for fully vaccinated travellers will reduce costs for some travellers, who pay for the tests, and for carriers, who enforce the testing requirements. The removal of the pre-departure test for fully vaccinated arrivals is considered proportionate in the context of increased protection provided by effective vaccines. Furthermore, given the altered epidemiological and immunological situation seen domestically and worldwide, this change would retain a proportionate set of public health measures in the international travel context whilst encouraging economic growth in the travel sector. Hospital occupancy in England is currently around 6,200, which is 5.5 times less than the peak seen in January 2021 of 34,000 and post-arrival test positivity in July and August amongst fully vaccinated international arrivals was significantly lower for vaccinated individuals.
- 7.20 This instrument updates the Regulations to treat as an “eligible traveller” any individual under the age of eighteen years who lives in one of the countries where vaccination is accepted under the Regulations. This will continue to be the case for all individuals under the age of eighteen who are resident in any country which is added to the list of eligible countries in the future. As is currently the case, children will not be required to show proof of residency but they will be required to show proof of age.
- 7.21 This instrument updates the Regulations to treat as an “eligible traveller” any English resident who can show through their NHS Covid Pass that a registered medical practitioner has advised that they should not be vaccinated for clinical reasons. Currently, all individuals who are unable to have a vaccine due to medical reasons are treated as unvaccinated at the UK border upon arrival. From 30th September a clinical review process will be in operation to enable English citizens to apply for a medical exemption from vaccination and to demonstrate this on the NHS Covid Pass. This update to the Regulations will accordingly recognise these individuals as an “eligible traveller”, thereby balancing the equality of opportunity with those who are able to be vaccinated.
- 7.22 This instrument updates references relating to operator liability and enforcement to reflect the above changes to vaccine certification and the new country allocation framework.
- 7.23 This instrument updates the Regulations to amend the medical evidence required when applying for a medical exemption to managed quarantine. This is intended to improve the medical evidence that is provided by people that are seeking a medical exemption and to ensure that they engage with any support needs that a person may require in managed quarantine.
- 7.24 This instrument will update the Regulations to remove the obligation on carriers to manually check vaccine certificates which have already been pre-verified within the form, using the vaccine upload function. The vaccine upload function, which is already live, allows Passengers to pre-verify their vaccine status by scanning a QR

code from the NHS app when filling in the PLF. It is an entirely optional feature within the PLF and does not impede the individual's ability to complete the form. This amendment is intended to reduce an unnecessary duplication in the checking of vaccine certification and support a wider ambition to automate processes at the border. It is expected that, as carriers will have to manually check less certificates, it will speed up passenger processing times during travel. This is particularly important as feedback from carriers shows that processing times have more than doubled since pre-COVID levels, despite only operating at circa 40% of pre-COVID capacity. As passenger numbers increase and the fully vaccinated exemption is expanded, it is important that this amendment is made to ease the burden on carriers, reduce queue times, and streamline the passenger journey.

7.25 The instrument updates the Regulations to remove the exemptions in Schedule 4 for the Global Education Summit and London Fashion Week which are no longer necessary as the events have taken place.

7.26 The instrument replaces the specified information for passengers in Schedule 12.

7.27 The instrument also makes minor and technical amendments to:

7.27.1 Update references to “red”, “amber”, “green”, “category 1” and “eligible category 2 arrival”.

7.27.2 Correct two minor errors identified in the Regulations: an erroneous cross-reference, and a failure to insert a necessary cross-reference due to oversight in a previous amending instrument.

7.28 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 the instrument.

15.2 Mark Joannides, Deputy Director for MQS, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 Edward Argar, The Minister for Health at the Department of Health and Social Care, can confirm that this Explanatory Memorandum meets the required standard.