

EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (ENGLAND) (AMENDMENT) (NO. 17) (AMENDMENT) REGULATIONS 2021

2021 NO. 1213

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) (Amendment) (No. 17) Regulations 2021 (the “No. 17 Regulation”) to expand the “eligible traveller” category to include a further 12 “relevant countries”. This is to ensure that the No. 17 Regulations achieve the original policy intent behind the No. 17 Regulations to extend the “eligible traveller” category to include individuals who can show certification of vaccination issued in a further 48 countries and territories. The purpose of the expansion of the “eligible traveller” category is to reduce the burden associated with health measures at the border and after arriving and to make these less complex to navigate.

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”).
- 3.2 Further this instrument comes into force before being laid. This amendment amends the No. 17 Regulations. The No. 17 Regulations were made on 29 October 2021 and erroneously omitted 12 countries due to be listed in the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 (the “International Travel Regulations”) to expand the “eligible traveller” category to recognise vaccination certification issued by a larger number of countries internationally. It is necessary that this instrument comes into force in order to correct the No. 17 Regulations so that they come into effect as previously intended. Unfortunately, it was not possible to complete this process in time to lay the document before the closure of Parliament on Friday 29th October 2021.
- 3.3 The Department has written to the two Speakers on 1st November 2021 to explain the circumstances and has sought to mitigate the impact of this late laying through Communications and Guidance to the public.

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.

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 International Travel Regulations which came into force on 17 May. The International Travel Regulations are currently subject to a formal review at least once every 28 days.

7. Policy background

What is being done and why?

7.1 This instrument amends the No. 17 Regulations to expand the “eligible traveller” category to include a further 12 countries. This is to ensure that the original policy intent behind the No. 17 Regulations to extend the “eligible traveller” category in the International Travel Regulations to include individuals vaccinated in a further 48 countries and territories is achieved. The purpose of this expansion is to reduce the burden associated with the health measures at the border and after arriving, and to make these less complex to navigate.

7.2 This instrument amends the Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 17) Regulations 2021 to bring the following provisions into force at 4am on Monday 1st November.

- Add Lesotho, Peru, Rwanda, Seychelles, Sierra Leone, Sri Lanka, Suriname, Tanzania, Trinidad and Tobago, Tunisia, Uganda, and Uruguay to the list of countries and territories in Regulation 5. The purpose of this amendment is to ensure that the correct countries are listed in Regulation 3A(4) of the International Travel Regulations. If travellers from countries listed in this part of the regulations can show, using evidence issued by the competent health authority of any of the relevant countries or territories that they have been fully vaccinated with a vaccine which is authorised for supply in the UK (i.e. Pfizer/BioNTech, Oxford/Astrazeneca, Moderna, Janssen) or the manufacturer’s equivalent in the relevant country, then they will meet the definition of “eligible traveller” and will not be required to self-isolate after arrival in England, take a pre-departure test or day 8 test.

Explanations

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

- 7.3 The No. 17 Regulations come into force on 1st November 2021. This includes an expansion to the list of “relevant countries” for which we accept vaccine certificates under the “eligible traveller” definition. The No. 17s, as made, adds 36 countries and territories to this list.

Why is it being changed?

- 7.4 This instrument ensures that the changes to the “eligible traveller” category included in the No. 17 Regulations are updated to reflect the original policy intent. The No. 17 Regulations were made on 29th October 2021 and erroneously omitted 12 countries due for inclusion. The updates to this instrument are necessary to ensure that the No. 17 Regulations come into effect as previously intended.
- 7.5 The purpose of the No. 17 Regulations changes to the “eligible traveller” category are to further facilitate international travel by simplifying measures for travellers vaccinated with a vaccine which is authorised for supply in the UK (i.e. Pfizer/BioNTech, Oxford/AstraZeneca, Moderna, Janssen) or the manufacturer’s equivalent in the relevant country in a wider range of countries, given that they have not been in a red list country in the last 10 days. This will reduce the burden of self-isolation and cost of testing for the traveller, as well as the impact on carriers who perform checks. This builds on the existing list of recognised countries in the context of the altered epidemiological and immunological situation seen domestically and worldwide and the increased protection provided by effective vaccines.

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 The legislation 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 Francesco Browne at the Department of Health and Social Care, email: Francesco.browne@dhsc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Ronnie Haynes, Deputy Director for Managed Quarantine Services, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Maggie Throup, Parliamentary Under Secretary of State for Vaccines and Public Health can confirm that this Explanatory Memorandum meets the required standard.