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STATUTORY INSTRUMENTS

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**2021 No. 38**

**The Health Protection (Coronavirus, Pre-Departure Testing and Operator Liability) (England) (Amendment) Regulations 2021**

**PART 1**

**Pre-Departure Testing**

**Amendment of the International Travel Regulations**

**3.—**(1) The International Travel Regulations are amended as follows.

(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(1);”;

(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 England 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 presents at immigration control at the Channel Tunnel shuttle terminal area in France(2), with the intention of boarding a shuttle service destined for the United Kingdom, must, on so presenting, possess valid notification of a negative result from a qualifying test taken by that person.

(3) A person who is travelling with a child aged 11 or over and for whom they have responsibility must—

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(1) [S.I. 2002/618](#), to which there are amendments not relevant to these Regulations.

(2) Article 4(1) of the Channel Tunnel (International Arrangements) Order 1993 ([S.I. 1993/1813](#)) has the effect of extending all frontier control enactments to the control zone in France. A “frontier control enactment” is an enactment which contains provision relating to frontier controls and the definition of “frontier controls” in Schedule 1 to that Order includes controls in relation to health. The Public Health (Control of Disease) Act 1984 and these Regulations made under it therefore apply in the control zone.

- (a) on their arrival in England, in the case of a person described in paragraph (1), or
- (b) when they present at immigration control, in the case of a person described in paragraph (2),

possess valid notification of a negative result from a qualifying test taken by that child.

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

(5) 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, 4C, 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 2B.

(6) For the purposes of this regulation—

- (a) a test is a qualifying test if it complies with paragraph 1 of Schedule 2B,
- (b) a notification of a negative result is valid if it includes the information specified in paragraph 2 of Schedule 2B,
- (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,
- (d) “shuttle service” has the meaning given in section 1(9) of the Channel Tunnel Act 1987(3).”.

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

(a) after paragraph (1)(a), insert—

“(aa) without reasonable excuse contravenes a requirement in regulation 3A.”;

(b) in paragraph (1A), for the words from “in regulation 4” to the end of that paragraph, substitute—

“in—

- (a) 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, or
- (b) regulation 4 in the circumstances described in paragraph (8)(d), (8A)(f), (9)(h) or (13A) of that regulation, if they reasonably believed at the time of the contravention that the test was an appropriate test (within the meaning given in paragraph 2 of Schedule 2A).”;

(c) after paragraph (1A), insert—

“(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 England 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 England meant that it was not reasonably practicable for them to meet the requirement in paragraph 1(c) of Schedule 2B, 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 (10)(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) In Schedule 2A (test to release)—
- (a) in the heading, for “Testing” substitute “Testing after arrival in England”;
  - (b) in paragraph 2(2), omit sub-paragraphs (a), (b) and (c) (definitions of “device”, “sensitivity” and “specificity”).
- (8) After Schedule 2A, insert—

“SCHEDULE 2B

Regulation 3A

Testing before arrival in England

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<sup>(4)</sup>, the National Health Services (Wales) Act 2006<sup>(5)</sup>, the National Health Service (Scotland) Act 1978<sup>(6)</sup>, or the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(7)</sup>, 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 England 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 England.
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 or age,
  - (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(5)(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

<sup>(4)</sup> 2006 c. 41.<sup>(5)</sup> 2006 c. 42.<sup>(6)</sup> 1978 c. 29.<sup>(7)</sup> 1972 No.1265 (N.I.14).

- is essential to the foreign country 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 International Travel Regulations apply 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 England before 4.00 a.m. on 18th January 2021.