
STATUTORY INSTRUMENTS

2021 No. 38

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

PART 2

Operator liability in respect of arrivals

Interpretation of Part 2

5. In this Part—

“authorised person” means—

- (a) in relation to passengers arriving by sea, the Secretary of State for Transport;
- (b) in relation to passengers arriving by air, the Civil Aviation Authority;
- (c) in relation to passengers arriving by rail, the Office of Rail and Road;

“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(1);

“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 International Travel Regulations;

“port” means—

- (a) any port (including a seaport, airport or heliport), or
- (b) a place which is an authorised terminal control point for international services for the purposes of sections 11 and 12 of the Channel Tunnel Act 1987(2);

“qualifying test” means a test that is a qualifying test for the purposes of regulation 3A of the International Travel 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 International Travel Regulations, or
- (b) to produce a required notification when requested to do so by an immigration officer pursuant to regulation 3A(4) of the International Travel Regulations;

(1) 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.

(2) 1987 c.53. See section 13(5) of that Act.

“relevant service” means a commercial transport service carrying passengers travelling to England from outside the common travel area, other than a shuttle service;

“required notification” means a valid notification of a negative test result from a qualifying test for the purposes of regulation 3A of the International Travel 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 (6)(c) of that regulation;

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

“the requirement to provide information” means the requirement in regulation 3(1) of the International Travel 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 section 3 of the Children Act 1989(3);

“shuttle service” has the meaning given in section 1(9) of the Channel Tunnel Act 1987.

Requirement to ensure passengers have completed a Passenger Locator Form

6.—(1) An operator must ensure that a passenger—

- (a) who presents at immigration control at the Channel Tunnel shuttle terminal area in France, with the intention of boarding a shuttle service destined for the United Kingdom, has completed a Passenger Locator Form;
- (b) who arrives at a port in England 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—

- (a) who presents at immigration control at the Channel Tunnel shuttle terminal area in France, with the intention of boarding a shuttle service destined for the United Kingdom, is in possession of a required notification, on so presenting;
- (b) who arrives at a port in England 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 England 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),

commits an offence.

(2) An offence under paragraph (1) is punishable on summary conviction by a fine.

(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—

- (a) presented at immigration control at the Channel Tunnel shuttle terminal area; or
- (b) boarded the relevant service,

as the case may be.

(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.

Fixed penalty notices

9.—(1) An authorised person may issue a fixed penalty notice to any operator who the authorised person reasonably believes has committed an offence under regulation 8(1).

(2) A fixed penalty notice is a notice offering the operator to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the authorised person specified in the notice.

(3) Where an operator is issued with a notice under paragraph (1) in respect of an offence—

- (a) no proceedings may be taken for the offence before the end of the period of 28 days following the date of the notice;
- (b) the operator may not be convicted of the offence if the operator pays the fixed penalty before the end of that period.

(4) A fixed penalty notice must—

- (a) give reasonably detailed particulars of the circumstances alleged to constitute the offence, including the name of the relevant passenger;
- (b) state the period during which (because of paragraph (3)(a)) proceedings will not be taken for the offence;
- (c) specify the amount of the fixed penalty;
- (d) if the fixed penalty notice relates to an offence under regulation 8(1)(a), inform the operator of the defence described in regulation 8(3) and that no proceedings will be taken for that

offence if satisfactory evidence that that defence applies is provided to the authorised person specified in the notice before the end of the period of 28 days following the date of the notice; and

- (e) state the name and address of the authorised person to whom payment of the fixed penalty is to be made or evidence of the defence described in regulation 8(3) is to be provided.
- (5) The amount of the fixed penalty for the purposes of paragraph (4)(c) is £2,000.
- (6) In any proceedings, a certificate that—
- (a) purports to be signed on behalf of the authorised person; and
 - (b) states that—
 - (i) the payment of a fixed penalty, or
 - (ii) satisfactory evidence of a defence under regulation 8(3), if relevant,
 was not received by the date specified in the certificate,

is evidence of the facts stated.

Prosecutions

10. Proceedings for an offence under regulation 8(1) may only be brought by an authorised person.

Power to use and disclose information

11.—(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 International Travel Regulations,
 - (b) information about the steps taken, pursuant to the International Travel 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 England,
 - (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⁽⁴⁾.

Review

12. The Secretary of State must review the need for the requirements imposed by regulations 6 and 7 of these Regulations at least once every 28 days, with the first review being carried out by 8th February 2021.

Expiry

13.—(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.

(4) 2018 c. 12.