

2021 No. 38

PUBLIC HEALTH, ENGLAND

TRANSPORT, ENGLAND

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

Made - - - - at 7.24 a.m. on 14th January 2021

Laid before Parliament at 2.00 p.m. on 14th January 2021

Coming into force in accordance with regulation 1(2) and (3)

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 45B, 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984(a).

Citation, commencement and application

1.—(1) These Regulations may be cited as the Health Protection (Coronavirus, Pre-Departure Testing and Operator Liability) (England) (Amendment) Regulations 2021.

(2) Subject to paragraph (3), these Regulations come into force at 4.00 a.m. on 15th January 2021.

(3) Regulations 6, 8(1)(a), 8(3), 8(5), 9(4)(d) and 9(6)(b)(ii) come into force on 1st February 2021.

(4) These Regulations apply in relation to England only.

Interpretation

2. In these Regulations—

“common travel area” has the meaning given in section 1(3) of the Immigration Act 1971(b);

“the International Travel Regulations” means the Health Protection (Coronavirus, International Travel) (England) Regulations 2020(c).

(a) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14).

(b) Section 1(3) provides that the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland are collectively referred to in that Act as “the common travel area”.

(c) S.I. 2020/568, amended by S.I. 2020/691, 724, 799, 805, 813, 819, 841, 866, 890, 913, 959, 980, 1013, 1039, 1070, 1076, 1094, 1129, 1161, 1190, 1227, 1238, 1277, 1292, 1323, 1337, 1360, 1424, 1517, 1595 and 1644, and S.I. 2021/18 and 25.

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(a);”;

(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(b), 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—

(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.

(a) S.I. 2002/618, to which there are amendments not relevant to these Regulations.

(b) 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.

- (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(a).”.
- (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.”.

(a) 1987 c. 53.

- (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(a), the National Health Services (Wales) Act 2006(b), the National Health Service (Scotland) Act 1978(c), or the Health and Personal Social Services (Northern Ireland) Order 1972(d), 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.

(a) 2006 c. 41.
 (b) 2006 c. 42.
 (c) 1978 c. 29.
 (d) 1972 No.1265 (N.I.14).

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 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.

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(a);

“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(b);

“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;

“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;

(a) 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.

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

“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^(a);

“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.

(a) 1989 c. 41.

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(a).

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.

At 7.24 a.m. on 14th January 2021

Grant Shapps
Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 1 of these Regulations amends the Health Protection (Coronavirus, International Travel) (England) Regulations 2020 (S.I. 2020/568) to introduce a requirement for persons travelling to England from outside the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland (the “common travel area” by virtue of section 1(3) of the Immigration Act 1971 (c. 77)) to possess a notification of a negative coronavirus test upon arrival in England or, if travelling on a shuttle service through the Channel Tunnel, upon presenting at immigration control at the Channel Tunnel shuttle terminal area in France.

Part 2 of these Regulations introduces requirements for persons operating commercial transport services (“operators”) for passengers travelling to England from outside the common travel area to ensure that passengers who arrive in England on such services have completed a Passenger Locator Form (regulation 6(1)) and possess notification of a negative test result (regulation 7(1)). Operators operating shuttle services through the Channel Tunnel are required to ensure that passengers have these documents by the time they present at immigration control at the Channel Tunnel shuttle terminal area in France. Breach of the requirements is an offence (regulation 8(1)).

Upon completion of the Passenger Locator Form, passengers receive a unique passenger reference number from the Home Office. An operator who has recorded a unique passenger reference number in the format used by the Home Office will have a defence to the offence in regulation 8(1)(a) (regulation 8(3)). Regulation 9 allows an authorised person to deal with an offence under regulation 8(1) by way of fixed penalty notice. A fixed penalty notice must give details of the particulars of the offence, including the name of the passenger without a completed Passenger Locator Form or notification of a negative test result.

As the provisions made by these Regulations will have effect for a period of less than 12 months, a full Impact Assessment has not been prepared. An Explanatory Memorandum is published alongside this instrument on www.legislation.gov.uk.

(a) 2018 c. 12.

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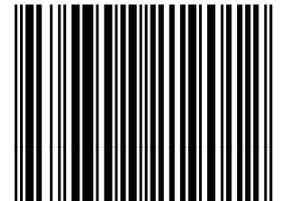
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