

EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, PRE-DEPARTURE TESTING AND OPERATOR LIABILITY) (ENGLAND) (AMENDMENT) REGULATIONS 2021

2021 No. 38

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport 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 The instrument amends the Health Protection (Coronavirus, International Travel) (England) Regulations 2020 (S.I. 2020/568) (“the International Travel Regulations”) to introduce a requirement for persons travelling to England from outside the common travel area 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.
- 2.2 The instrument also 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 (“PLF”) and possess notification of a negative test result. Operators operating shuttle services through the Channel Tunnel are instead 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.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Department regrets 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”). In light of the increasing domestic and global incidence of COVID-19, and the emergence of new variants of the virus around the world, the Government considers that a pre-departure testing regime, and measures to increase PLF completion rates, for individuals travelling into England from outside the common travel area are urgently required to prevent danger to public health.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The entire instrument applies to England only.

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.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The legislative context is set out in paragraphs 6.1 to 6.5 of the Explanatory Memorandum to the International Travel Regulations, available online at https://www.legislation.gov.uk/ukxi/2020/568/pdfs/ukxiem_20200568_en.pdf. In summary, the Public Health (Control of Disease) Act 1984 (“the 1984 Act”) and regulations made under it provide a legislative framework for health protection in England and Wales. Section 45B(1) of the 1984 Act 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 for preventing the spread of infection or contamination by means of any vessel, aircraft, train or other conveyance leaving any place.
- 6.2 Section 45B(2)(e) and (g) provide, respectively, that regulations made under section 45B may include provision for regulating the arrival of conveyances and the entry of persons, and requiring persons to provide information (including information relating to their health). The instrument implements a pre-departure testing regime by:
- i) requiring persons arriving in England from outside the common travel area to provide notification of a negative coronavirus test result; and
 - ii) requiring operators to ensure that passengers arriving at a port in England on one of their services or, in the case of shuttle services via the Channel Tunnel, presenting at an immigration control point at the Channel Tunnel shuttle terminal area in France with the intention of boarding one of their services to the United Kingdom, possess such a notification.
- 6.3 On 2nd June 2020, the Secretary of State for Health and Social Care made the International Travel Regulations under sections 45B, 45F(2) and 45P(2) of the 1984 Act. The International Travel Regulations came into force on 8th June 2020 and introduced a requirement (“the requirement to provide information”) for people:
- i) arriving in England from outside the common travel area; or
 - ii) arriving in England from elsewhere in the common travel area where they have been outside the common travel area in the past 14 days, to provide their personal and contact details, and travel information. This information must be provided on a PLF. Following advice from the Chief Medical Officer, the period of 14 days was shortened to 10 days by the Health Protection (Coronavirus, International Travel and Public Health Information) (England) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/1517).
- 6.4 The requirement to provide information was introduced to aid the domestic contact tracing programme and is important for monitoring and enforcement of the requirement to self-isolate which was also introduced by the International Travel Regulations (regulation 4 of those Regulations). The instrument introduces a requirement for operators to ensure that passengers arriving at a port in England on one of their services or, in the case of shuttle services via the Channel Tunnel, presenting at an immigration control point at the Channel Tunnel shuttle terminal area in France with the intention of boarding one of their services to the United Kingdom, have completed a PLF.

7. Policy background

What is being done and why?

- 7.1 The International Travel Regulations were made on an urgent basis in order to reduce the likelihood that an increase in COVID-19 infections would arise as a result of imported cases. In response to the increasing domestic and global incidence of COVID-19, and the emergence of new variants around the world, it is necessary to add an additional layer of public health protection to the existing measures by implementing a pre-departure testing regime for international arrivals into England. Similar requirements have been introduced across the world and are important in preventing the cross-border transmission of COVID-19.
- 7.2 Pre-departure testing is considered to be an important addition to the existing measures in place for people arriving from high-risk regions, under the International Travel Regulations, particularly in the context of providing protection from mutations. It will reduce the proportion of people travelling to and entering England while they are infectious, thereby reducing danger to public health from international arrivals.
- 7.3 In addition, the risk of transmission to other travellers whilst on transport can be reduced by testing, meaning the measures will have a significant impact on the spread of COVID-19 during England-bound travel. The instrument introduces a requirement for people travelling to England from outside the common travel area to possess a notification of a negative coronavirus test result upon arrival in England. Failure, without reasonable excuse, to comply with that requirement is a criminal offence, punishable on summary conviction by a fine. There is a fixed penalty regime in place under which a person may be issued with a £500 fixed penalty for the first offence, with penalties doubling for subsequent offences, up to a maximum of £4,000 for the fourth and any subsequent offences.
- 7.4 Whilst pre-departure testing will reduce the proportion of people entering England whilst infectious, it will not catch all cases. People may become infectious between taking the test and travelling, or whilst travelling. Accordingly, the instrument does not affect the existing self-isolation requirement under regulation 4 of the International Travel Regulations. People arriving in England who have departed from or transited through non-exempt countries, territories or regions in the 10 days preceding their arrival in England are required to self-isolate until 10 days have elapsed since the day after they left such a country, territory or region (the ability to shorten the self-isolation period using the Test to Release regime also remains unchanged).
- 7.5 In order to ensure that as few people as possible arrive in England without notification of a negative coronavirus test result, the instrument also introduces a requirement for operators to ensure that passengers arriving in England, or presenting at immigration control at the shuttle terminal area in France with the intention of boarding a shuttle service to the United Kingdom, have that notification. Breach of the requirement is a criminal offence, punishable on summary conviction by a fine. There is a fixed penalty regime in place, with a fixed penalty of £2,000 for each offence.
- 7.6 The International Travel Regulations introduced a requirement for travellers to England from outside the common travel area, or from within the common travel area if they have been outside the common travel area in the preceding 14 (now 10) days, to provide information on the PLF. Similar requirements have been introduced across the world and are important in preventing the cross-border transmission of

COVID-19. The information collected in the PLF is used to reduce the transmission of the virus by facilitating the government's contact tracing programme and enabling the self-isolation requirement to be enforced. Therefore, high levels of PLF completion are vital from a public health perspective.

- 7.7 The Government has taken a number of steps to increase levels of PLF completion. In order to ensure that as few people as possible arrive in England without a PLF, this instrument requires operators to ensure that passengers arriving in England, or presenting at immigration control at the shuttle terminal area in France with the intention of boarding a shuttle service to the United Kingdom, have completed the PLF. Breach of the requirement is a criminal offence, punishable on summary conviction by a fine. There is a fixed penalty regime in place, with a fixed penalty of £2,000 for each offence.
- 7.8 The requirements for people arriving in England to possess a notification of a negative coronavirus test and to provide information on the PLF are subject to limited exemptions and failure to comply with either requirement is only a criminal offence if the person does not have a reasonable excuse for non-compliance.
- 7.9 The exemptions from the requirement to possess a notification of a negative coronavirus test are limited and apply where requiring a pre-departure test would severely impact crucial travel, either because individuals travel with such frequency that pre-departure testing would be impractical (e.g. transport crew) or where the need for travel could arise urgently (e.g. workers with specialist skills required for emergency works).
- 7.10 Pilots of ships are exempt from the requirement to possess a notification of a negative coronavirus test and also from the requirement to self-isolate, under regulation 4 of the International Travel Regulations. The policy intention is for the exemptions to apply where a pilot has travelled to the United Kingdom in the course of their work, or has been repatriated to the United Kingdom. The instrument amends the wording of the exemption from the requirement to self-isolate so that that exemption applies to all pilots who are repatriated to the United Kingdom, regardless of whether they are repatriated in accordance with the Maritime Labour Convention 2006 or the Work in Fishing Convention 2007.
- 7.11 The instrument sets out a non-exhaustive list of reasonable excuses, catering for situations where it would not be reasonable to expect an individual to possess a notification of a negative test result. This includes where an individual has contracted coronavirus and requires emergency medical treatment (such individuals would be expected to travel to England on private conveyances wherever possible).
- 7.12 The existence of exemptions and reasonable excuses is reflected in the requirements placed on operators.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 There are no plans to consolidate the relevant instruments.

10. Consultation outcome

10.1 There has been no public consultation in relation to this instrument.

11. Guidance

11.1 Guidance for the public has been published and can be viewed at: <https://www.gov.uk/guidance/coronavirus-covid-19-testing-for-people-travelling-to-england>.

12. Impact

12.1 There is no, or no significant, impact on charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 There is an impact on business, in particular on operators of commercial transport services. The instrument is likely to generate costs for operators required to ensure that passengers have completed a PLF and possess notification of a negative test result. An Analytical Assessment setting out those impacts has been prepared for this instrument.

12.4 An Impact Assessment has not been prepared for this instrument because the provisions affecting business will have effect for a period of less than 12 months.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses. We are not aware of any carriers who are small businesses.

13.2 All people travelling for business, including in relation to small businesses, will now be required to undertake a pre-departure test, unless they are exempt or have a reasonable excuse for failing to comply with the requirement. The indirect impact this could have on small businesses is justified by the public health protection afforded by this measure.

14. Monitoring & review

14.1 The International Travel Regulations include a statutory review provision requiring them to be reviewed by 27th July 2020, and at least every 28 days thereafter. Those review provisions are unaffected by the instrument. The International Travel Regulations cease to have effect at the end of the period of twelve months beginning on the day on which they came into force (8th June 2020).

14.2 The instrument also includes a statutory review provision requiring it to be reviewed by 8th February 2021, and at least every 28 days thereafter (to align with the review of the International Travel Regulations). The instrument ceases to have effect on 7th June 2021, in line with the International Travel Regulations.

14.3 Monitoring of the legislation will be informed by regular scientific advice on the domestic incidence and prevalence of coronavirus, relative to the incidence, prevalence, and trajectory of coronavirus in countries and territories overseas. This will contribute to ascertaining whether the instrument and the International Travel Regulations are having a material or a marginal impact on the incidence of coronavirus in the United Kingdom, and whether the exemptions made by the instrument remain sufficiently safe.

15. Contact

- 15.1 Alice MacFarlan at the Department for Transport (Alice.MacFarlan@dft.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Lola Fadina, Deputy Director for the policy area at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Grant Shapps MP, Secretary of State for Transport, can confirm that this Explanatory Memorandum meets the required standard.