

## EXPLANATORY MEMORANDUM TO

### THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (ENGLAND) (AMENDMENT) (NO. 2) REGULATIONS 2021

2021 No. 670

#### 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) Regulations 2021 (“Coronavirus, International Travel and Operator Liability Regulations”) to:
  - (a) Add London Biggin Hill airport to the list of designated Managed Quarantine Service ports.
  - (b) Require direct flights from ‘Red List’ countries to arrive at airport terminals which only accept ‘Red List’ direct flights.
  - (c) Remove Portugal (including the Azores and Madeira) from the list of category 1 countries and territories are referred to colloquially and in guidance as “Green List” countries and territories.
  - (d) Add Afghanistan, Sudan, Sri Lanka, Bahrain, Trinidad and Tobago, Costa Rica and Egypt to the list of category 3 countries and territories are referred to colloquially and in guidance as “Red List” countries and territories.
  - (e) Require ‘category 1’ arrivals, without work-based exemptions from quarantine, to book a day 2 test, even if staying for less than this period.
  - (f) Require arrivals from a ‘category 2’ country, without work-based exemptions from quarantine, to book a day 2 and day 8 test, even if staying for less than this period.
  - (g) Provide that transit passengers from category 1 countries are not under an obligation to book or undertake day 2 tests.
- 2.2 These measures are part of a package of measures designed to reduce the public health risks posed by the spread from international travellers of acute severe respiratory syndrome coronavirus 2 (“SARSCoV-2”) which causes the disease COVID-19, in particular with respect to the possibility of a variant of concern being imported to the UK.

#### 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”). Having reviewed the latest assessments of public health risk, the Government considers these measures are urgently necessary to protect public health and is acting accordingly to prevent the ingress from overseas of variants of concern. Delaying the implementation of these measures could allow a variant of concern to spread.

***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 As this instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**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 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 Coronavirus, International Travel and Operator Liability Regulations published on [www.legislation.gov.uk](http://www.legislation.gov.uk).
- 6.2 The International Travel Regulations came into force on 8 June 2020 and introduced a requirement for people arriving into England who have been outside the Common Travel Area in the past 14 days to provide their personal and contact details and travel information (called “passenger information”) by completing the Passenger Locator Form (“PLF”), and to self-isolate for a period of 14 days.
- 6.3 The Health Protection (Coronavirus, International Travel) (Regulations) (England) 2020 came into force on 8 June 2020 and introduced a requirement for people arriving into England who have been outside the Common Travel Area in the past 14 days to provide their personal and contact details and travel information (called “passenger information”) by completing the Passenger Locator Form (“PLF”), and to self-isolate for a period of 14 days.
- 6.4 The Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 sets out requirements for persons arriving in England from outside of the Common Travel Area (directly or indirectly) and imposes related obligations on the operators of commercial transport services bringing such passengers to England directly.
- 6.5 Detail on the requirements imposed on passengers are as follows:

***Requirement to provide information (regulation 3)***

- 6.6 Persons who arrive in England from outside the common travel area, irrespective of whether they have arrived from a red, amber or green country, are required to provide information about themselves, their journey and accommodation on their arrival using the Passenger Locator Form.

***Possession of negative test result (regulation 4)***

- 6.7 Pre-departure testing reduces the number of people travelling to and entering England while they are infectious, thereby reducing danger to public health from international arrivals.
- 6.8 People travelling to England from outside the common travel area are required to possess notification of a negative COVID-19 test result upon arrival in England, or, if travelling on a shuttle service through the Channel Tunnel, upon presenting at UK immigration control at the Channel Tunnel shuttle terminal area in France.
- 6.9 A person who is travelling with a child aged 11 or over, for whom they have responsibility for, must possess notification of a negative result for that child.

***Requirement to book and undertake tests (regulations 5(1) and 6)***

- 6.10 Arrivals from amber-list or red-list countries who remain in England for 2 days or more are required to possess a booking for a day 2 test and a day 8 test upon arrival and provide evidence of such, if requested by an immigration officer or constable. Amber list arrivals who intend to leave England either on or before the 7th day of their arrival are only required to possess a booking for a day 2 test. If such a person in fact stays for 8 days or more, they are required to undertake a day 8 test. Green-list arrivals are only required to possess a booking for a day 2 test on arrival if they intend to remain in England for 2 days or more).
- 6.11 If a day 2 test generates a positive result, the person who has tested positive will need to self-isolate or remain in quarantine for 10 days after the day on which they took the test. They will not be required to undertake a day 8 test.

***Requirements relating to self-isolation (regulation 9)***

- 6.12 Arrivals in England must self-isolate if they have travelled from (a) an amber (category 2) country or territory or (b) from a green (category 1) country or territory and, within the 10 days preceding their arrival, they have departed from or transited through an amber (category 2) country or territory. They must remain in self-isolation until 10 days have elapsed since the day after they left an amber country or territory. Additionally, the limited number of red-list arrivals who are exempt from managed self-isolation must comply with the normal self-isolation rules.
- 6.13 A person may not leave, or be outside of, the place where they are self-isolating except for reasons set out in regulation 9(11).
- 6.14 A person who arrives in England from a country or territory listed in Schedule 3 (category 3 countries or territories – commonly known as the red list), or has in the 10 days before their arrival in England departed from or transited through a country or territory listed in that Schedule, must be in possession of a “managed self-isolation package” upon arrival.
- 6.15 A managed self-isolation package is a booking for a place in accommodation designated by the Secretary of State. Arrivals from category 3 / red list countries or territories must enter England at a designated port and travel directly to the booked accommodation using the approved transport.
- 6.16 These measures are designed to reduce the public health risks posed by the spread of COVID-19, in particular with respect to the possibility of a variant of concern or high-risk variant under investigation being imported to the UK.

- 6.17 On 17 May a change was made to the regulations to:
- 6.18 Exclude seafarers and inspectors and surveyors of ships who work on cruise ships from the exemptions for such roles from the requirements imposed by Schedule 11 to those Regulations (managed self-isolation for category 3/red list arrivals);
- 6.19 Correct errors in those Regulations, namely a typographical error in regulation 9, two inaccurate cross-references in Schedule 6, and provisions that do not clearly apply all of the operator liability requirements (in Part 4 of the Regulations) to journeys by rail and sea (in addition to journeys by air, which are unaffected by the issue).

## **7. Policy background**

### *What is being done and why?*

- 7.1 The identification of new variants of SARS-CoV-2 and the possibility of a variant of concern arising with higher transmission rates or the potential to affect vaccine efficacy could have significant adverse effects on the UK's public health. In response to this threat, the Government mandated a new managed quarantine service – managed self-isolation - which set out new requirements for people who had travelled from a country subject to additional measures or been in one in the 10 days prior to arrival in England to self-isolate in designated accommodation for 10 days (subject to specified exemptions).
- 7.2 This instrument supports the implementation of this system by making an amendment to the Coronavirus, International Travel and Operator Liability Regulations to allow for further processing capacity for passengers from red-list countries by adding London Biggin Hill Airport as managed quarantine service ports.
- 7.3 Secondly, the instrument brings to an end the previous pilots announced 9 and 23 April allowing a small number of direct 'Red list' flights from Pakistan and Bangladesh, and India, respectively. This pilot suggested that the additional impact of direct flight bans in deterring travel is minimal when testing, quarantine and entry ban measures are also in place, and the blanket ban is therefore no longer necessary to protect public health. We are therefore removing the ban on direct flights from 'Red list' countries.
- 7.4 However, the way that we operationalise direct flights will clearly be important to ensure that the passenger journey is as smooth and as safe as possible. We are therefore piloting a system of dedicated terminals for 'Red List' direct flights which will ensure 'Red List' direct flight passengers remain separated from passengers from 'amber' and 'green' list countries. This is intended to aid swift and safe passenger journeys through the terminal, as operational capacity is focused on direct and indirect 'Red List' passengers, which require the most rigorous health checks at the border. The additional capacity will help to reduce mixing and crowding in terminals, and so also mitigate the public health risks for 'Amber' and 'Green list' passengers.
- 7.5 The instrument provides for a pilot which permits the arrival of direct commercial flights from red list countries (listed in paragraph 4 of Schedule 13) to arrive at Heathrow Terminal 3 and Birmingham Airport South Terminals only. The pilot terminals were selected as the government is satisfied that adequate facilities and procedures are in place which allow for the efficient transfer of passengers into the managed quarantine service. The aim of the pilot is to allow assessment of the operational effectiveness and public health benefits of such an approach. Should the

pilot be successful, consideration will be given as to whether other terminals can provide such facilities and procedures to cater for direct flights from red list countries.

- 7.6 This instrument removes Portugal (including the Azores and Madeira) from the list of category 1 countries and territories referred to as “Green List” countries and territories.
- 7.7 This instrument adds Afghanistan, Sudan, Sri Lanka, Bahrain, Trinidad and Tobago, Costa Rica and Egypt to the list of category 3 countries and territories referred to as “Red List countries and territories.
- 7.8 This instrument amends the testing requirements for ‘category 1 list’ arrivals and arrivals from category 2 countries to elaborate on provisions in the regulations as they were laid to ensure that the policy intention is fully reflected. The regulations as drafted created an identified compliance risk, with short stay arrivals being exempt from the obligation to book a testing package in advance. The policy intent is that international arrivals, who are not claiming a work-based exemption, should be required to purchase a day 2 test, if a category 1 arrival, and a day 2 and day 8 test as an arrival from a category 2 country, even if they are staying for a shorter period.
- 7.9 The amendment of this provision means that a further provision is needed to deal with category 1 arrivals who are “transit passengers” as defined in the Coronavirus, International Travel and Operator Liability Regulations. A transit passenger is a person who on arrival in the UK either (1) passes through to another country/territory outside the Common Travel Area without entering the UK, or (2) enters the UK purely to travel onwards to another country/territory outside the Common Travel Area and doesn’t leave their port or only leaves their port to travel to the port they are departing from.
- 7.10 The policy already implemented in the regulations is that transit passengers travelling from category 2 countries are not required to book or undertake mandatory testing. They either do not enter the UK or they enter it and stay strictly within their port of arrival or strictly are only permitted to travel to their port of departure.
- 7.11 The policy intention is to treat category 1 list arrivals in the same way as arrivals from category 2 countries. Therefore provision is being made in this instrument to provide that the obligation to book and undertake tests does not apply to them.

## **8. European Union (Withdrawal) Act 2018/ 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 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 [www.gov.uk/coronavirus](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 Coronavirus, International Travel and Operator Liability 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 This instrument applies to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 A statutory review clause is included in the Coronavirus, International Travel and Operator Liability Regulations the Secretary of State must review the need for the requirements imposed by the Regulations, which this instrument amends, at least every 28 days.

## **15. Contact**

- 15.1 Nathan Hepburn at the Department of Health and Social Care email: [Nathan.Hepburn@dhsc.gov.uk](mailto:Nathan.Hepburn@dhsc.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Ronnie Haynes, Deputy Director at the Department of Health and Social Care, can confirm that this explanatory memorandum meets the required standard.
- 15.3 Lord Bethell of Romford, Parliamentary Under-Secretary of State for Innovation at the Department of Health and Social Care, can confirm that this explanatory memorandum meets the required standard.