

2023 No. 2

PUBLIC HEALTH, ENGLAND

**The Health Protection (Coronavirus, International Travel from
China) (England) Regulations 2023**

Made - - - - at 1.02 p.m. on 4th January 2023

Laid before Parliament at 2.15 p.m. on 4th January 2023

Coming into force - - at 4.00 a.m. on 5th January 2023

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).

PART 1

Introductory

Citation, commencement, extent, application and interpretation

1.—(1) These Regulations may be cited as the Health Protection (Coronavirus, International Travel from China) (England) Regulations 2023.

(2) These Regulations come into force at 4.00 a.m. on 5th January 2023.

(3) These Regulations extend to England and Wales, and apply in relation to England only.

(4) In these Regulations, “mainland China” means the People’s Republic of China excluding—

- (a) the Hong Kong Special Administrative Region;
- (b) the Macao Special Administrative Region.

PART 2

Requirement to possess notification of a negative result from a pre-departure test

Application of Part to persons arriving from mainland China

2.—(1) This Part applies to a person (“P”) who arrives in England on a flight from mainland China.

(2) This Part does not apply to a person described in the Schedule.

(3) In paragraph (1), “a flight from mainland China” means—

- (a) in the case of a commercial flight—

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

- (i) a flight that, having departed from mainland China, does not land in any country or territory (other than England), or
 - (ii) a flight to which P transits having arrived in a country or territory (“the third country or territory”) on a flight which departed from mainland China;
 - (b) in any other case, a flight on an aircraft that departs from mainland China whether or not the aircraft lands, for any purpose, in any other country or territory in the course of its journey to England.
- (4) For the purposes of paragraph (3)(a)(ii), P transits to a flight if, having arrived in the third country or territory—
- (a) P continues their journey to England on that flight,
 - (b) the flight is—
 - (i) with the same flight operator, or
 - (ii) with a different flight operator under an arrangement by which the entire journey to England is treated as a single journey, and
 - (c) P remains, at all times whilst waiting to depart from the third country or territory, within the airport at which they arrived and departs on the flight from that airport without first passing through immigration control.

Requirement to possess notification of a negative result from a pre-departure test

3.—(1) A person to whom this Part applies (“P”) must, when they arrive in England, possess valid notification of a negative result from—

- (a) where P is an adult—
 - (i) a pre-departure test undertaken by them;
 - (ii) who is accompanying a child aged 12 or over for whom they have responsibility, a pre-departure test undertaken by that child;
- (b) where P is a child aged 12 or over who is unaccompanied by an adult with responsibility for them, a pre-departure test undertaken by them,

unless P has a reasonable excuse.

(2) For the purposes of paragraph (1), reasonable excuses for not possessing valid notification of a negative test result in relation to a person (“M”) include, in particular, where—

- (a) M was medically unfit to provide a sample for a pre-departure test and possessed a document, in English or accompanied by a certified English translation, signed by a medical practitioner entitled to practise the country or territory in which that practitioner was based, to that effect;
- (b) it was not reasonably practicable for a pre-departure test to be obtained in relation to M due to a disability;
- (c) M required medical treatment with such urgency that obtaining a pre-departure test was not reasonably practicable;
- (d) M contracted coronavirus and required emergency medical treatment;
- (e) P 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 P to obtain a pre-departure test.

(3) A person who possesses valid notification of a negative result from a pre-departure test must produce that notification if requested to do so by an immigration officer.

(4) In this regulation—

“child” means a person under the age of 18;

“immigration officer” means—

- (a) a person appointed by the Secretary of State as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971(a);
- (b) a person appointed by the Secretary of State to perform the functions of an immigration officer under these Regulations;

“pre-departure test” means a test for the detection of SARS-CoV-2 that complies with regulation 4;

“valid notification of a negative result” means a notification that includes the information specified in regulation 5.

Pre-departure test criteria

4.—(1) For the purposes of regulation 3(4), a test complies with this regulation if—

- (a) it is 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 detection of less than or equal to 100,000 SARS-CoV-2 copies per millimetre,
- (b) it is not provided or administered by a public provider, and
- (c) the test sample is taken from the person no more than two days before the person’s deemed time of departure.

(2) In this regulation,

“deemed time of departure” means—

- (a) in relation to a person travelling on a commercial flight—
 - (i) the flight’s scheduled departure time, if the person is arriving in England on a flight from mainland China within the meaning of regulation 2(3)(a)(i);
 - (ii) the scheduled time of departure of the flight that departs from mainland China, if the person is arriving in England on a flight from mainland China within the meaning of regulation 2(3)(a)(ii);
- (b) in any other case, the actual time of departure of the aircraft on which the person is travelling to England.

“public provider” means a test provider who provides or administers a test under the National Health Service Act 2006(b), the National Health Service (Wales) Act 2006(c), the National Health Service (Scotland) Act 1978(d), or the Health and Personal Social Services (Northern Ireland) Order 1972(e).

Form of notification of negative result

5. For the purposes of regulation 3(4), a notification of a negative test result is valid if it includes, in English, French or Spanish—

- (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;

(a) 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. There are other amendments not relevant to this instrument.

(b) 2006 c. 41.

(c) 2006 c. 42.

(d) 1978 c. 29.

(e) S.I. 1972/1265 (N.I. 14).

- (f) a statement—
 - (i) that the test was a polymerase chain reaction test, or
 - (ii) of the name of the device that was used for the test.

PART 3

Requirement for operators to implement and maintain processes and systems

Requirement to implement and maintain processes and systems

6.—(1) An operator who operates a commercial flight on which a relevant arrival arrives in England must implement and maintain adequate processes and systems to ensure each relevant arrival on the commercial flight is, when they arrive in England, in possession of the notification required by regulation 3.

(2) For the purposes of paragraph (1), a person is not to be treated as a relevant arrival if the operator, or a person acting on behalf of the operator, reasonably believes—

- (a) the person is not a relevant arrival;
- (b) the person has a reasonable excuse which would protect them from liability under regulation 8(1) for failing to comply with a requirement in regulation 3;
- (c) the person is being lawfully compelled to travel to the United Kingdom in the course of an extradition, prisoner transfer or deportation.

(3) In this regulation, “relevant arrival” means a person to whom Part 2 applies.

Requirement to retain and provide records and information

7.—(1) An operator to whom regulation 6(1) applies must, unless it has a reasonable excuse, retain such records and information as are required to show that it has complied with that regulation.

(2) The Civil Aviation Authority may request from an operator copies of such records and information as the Civil Aviation Authority considers are required to determine whether the operator has complied with regulation 6(1).

(3) A request under paragraph (2) must specify the period within which the operator must provide the records and information requested.

(4) An operator must, unless it has a reasonable excuse, comply with a request under paragraph (2) within the period specified under paragraph (3).

(5) In determining whether an operator has complied with regulation 6(1), the Civil Aviation Authority must have regard to the following matters so far as the Civil Aviation Authority has information about them—

- (a) the regime by which the operator checks that persons to whom Part 2 applies are in possession of the notification required by regulation 3, together with the approach to retaining contemporaneous evidence obtained as a result of such checks;
- (b) the information the operator has collected about persons to whom Part 2 applies who have not complied with regulation 3;
- (c) the existence and quality of any guidance or training programmes for those involved in the day-to-day operation of the processes and systems;
- (d) whether the operator has—
 - (i) appointed a named contact to assist the Civil Aviation Authority in determining whether the operator has complied with regulation 6(1), and
 - (ii) notified the Civil Aviation Authority of the identity of that contact;

- (e) the speed and effectiveness of any response the operator makes to any recommendations made by the Civil Aviation Authority intended to secure the operator's compliance with regulation 6(1);
- (f) any failure to comply with a request under paragraph (2);
- (g) any other matter the Civil Aviation Authority considers appropriate.

PART 4

Enforcement and expiry

Offences and penalties

- 8.**—(1) A person commits an offence if they fail to comply with a requirement in regulation 3.
- (2) An operator commits an offence if it fails to comply with a requirement in—
- (a) regulation 6;
 - (b) regulation 7.
- (3) An offence under—
- (a) paragraph (1) is punishable on summary conviction by a fine;
 - (b) paragraph (2) is punishable on summary conviction by a fine not exceeding level 4 on the standard scale.

Fixed penalty notices

- 9.**—(1) An authorised person may issue a fixed penalty notice to any person whom the authorised person reasonably believes—
- (a) has committed an offence under regulation 8, and
 - (b) if an individual, is aged 18 or over.
- (2) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the designated officer.
- (3) Where a person is issued with a notice under this regulation 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 person may not be convicted of the offence if the person 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,
 - (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 in accordance with paragraphs (5) and (6),
 - (d) state the name and address of the person to whom the fixed penalty may be paid, and
 - (e) specify permissible methods of payment.
- (5) In the case of—
- (a) an offence under regulation 8(1)—
 - (i) the amount of the first fixed penalty notice is £500;
 - (ii) the amount of the second fixed penalty notice is £1,000;
 - (iii) the amount of the third fixed penalty notice is £2,000;
 - (iv) the amount of the fourth fixed penalty notice is £4,000;

(b) an offence under regulation 8(2), the amount of the fixed penalty notice is £4,000.

(6) If—

(a) the fixed penalty notice is the first one issued to the person, and

(b) the amount is paid before the end of the period of 14 days following the date of the notice,

the amount of the fixed penalty is 50% of the amount that is otherwise specified in paragraph (5).

(7) Whatever other method may be specified under paragraph (4)(e), payment of a fixed penalty may be made in respect to an offence under regulation 8(1) by pre-paying and posting to the person whose name is stated under paragraph (4)(d), at the stated address, a letter containing the amount of the penalty (in cash or otherwise).

(8) Where a letter is sent as described in paragraph (7), payment is regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(9) Where—

(a) a fixed penalty notice has been issued in respect of an offence under regulation 8(2) and paid in accordance with this regulation, and

(b) the breach of the requirements amounting to the offence in respect of which the fixed penalty notice was issued continues,

an authorised person may issue another fixed penalty notice in relation to the offence.

(10) In any proceedings, a certificate that—

(a) purports to be signed by or on behalf of the designated officer, and

(b) states that the payment of a fixed penalty was, or was not, received by the date specified in the certificate,

is evidence of the facts stated.

(11) In this regulation—

“authorised person” means—

(a) in relation to an offence under regulation 8(1)—

(i) a constable;

(ii) an immigration officer;

(b) in relation to an offence under regulation 8(2), the Civil Aviation Authority;

“the designated officer” means—

(a) in relation to an offence under regulation 8(1), an officer designated by the Secretary of State for the purposes of this regulation;

(b) in relation to an offence under regulation 8(2), the authorised person.

Prosecutions

10. Proceedings for an offence under—

(a) regulation 8(1) may be brought by the Crown Prosecution Service and any person designated by the Secretary of State;

(b) regulation 8(2) may be brought by the Civil Aviation Authority.

Expiry

11. These Regulations expire at the end of 4th April 2023.

At 1.02 p.m. on 4th January 2023

Mark Harper
Secretary of State
Department for Transport

SCHEDULE

Regulation 2(2)

Descriptions of persons to whom Part 2 does not apply

Transport workers

1.—(1) A member of aircraft crew where they have travelled to the United Kingdom in the course of their work or are otherwise required to travel to the United Kingdom for work purposes.

(2) For the purposes of this paragraph—

- (a) “member of aircraft crew” means a person who—
 - (i) acts as a pilot, flight navigator, flight engineer or flight radiotelephony operator of an aircraft,
 - (ii) is carried on the flight deck and is appointed by the operator of the aircraft to give or to supervise the training, experience, practice and periodical tests required for the flight crew under article 114(2) of the Air Navigation Order 2016(a) or under Annex III or Annex VI of the Air Operations Regulation, or
 - (iii) is carried on the flight for the purpose of performing duties to be assigned by the operator or the pilot in command of the aircraft in the interests of the safety of passengers or of the aircraft;
- (b) travel for work purposes includes, in particular—
 - (i) where the member of aircraft crew resides outside the United Kingdom, travelling to the United Kingdom to work on an aircraft departing from the United Kingdom,
 - (ii) travelling to attend work-related training in the United Kingdom,
 - (iii) returning to the United Kingdom following work-related training outside the United Kingdom;
 - (iv) returning to the United Kingdom following work as a member of aircraft crew outside of the United Kingdom;
- (c) “Air Operations Regulation” has the meaning given in paragraph 1 of Schedule 1 to the Air Navigation Order 2016.

2. A civil aviation inspector, as defined in Annex 9 to the Convention on International Civil Aviation signed at Chicago on 7th December 1944, where they have travelled to the United Kingdom when engaged on inspection duties.

Other work-related exemptions

3.—(1) A person who has travelled to the United Kingdom for the purpose of transporting material which consists of, or includes, human cells or blood and which is to be used for the provision of healthcare by a healthcare provider.

(2) For the purposes of sub-paragraph (1)—

- (a) “blood” includes blood components;
- (b) “healthcare” means all forms of healthcare provided for individuals, whether relating to mental or physical health, including healthcare in connection with giving birth.

4.—(1) Any person in respect of whom the relevant Department has certified—

- (a) as being a person who is—

(a) S.I. 2016/765.

- (i) a Crown servant or government contractor who is required to undertake essential government work or essential policing whilst in the United Kingdom or is returning from conducting such work outside of the United Kingdom,
 - (ii) required to undertake essential state business in the United Kingdom or is returning from conducting such business outside of the United Kingdom, or
 - (iii) returning to the United Kingdom where this is necessary to facilitate essential government operations and includes, in particular, the functioning of a diplomatic mission or consular post of His Majesty or of a military or other official posting on behalf of His Majesty, and
- (b) that, as a result, the person cannot reasonably comply with the requirements of regulation 3.
- (2) For the purposes of sub-paragraph (1)—
- (a) “consular post” means any consulate-general, consulate, vice-consulate or consular agency;
 - (b) “essential government operations” means activity which has been designated as essential to the United Kingdom or His Majesty’s Government by the relevant Department, and, includes, in particular, activity relating to the functioning of a diplomatic mission or consular post of His Majesty or of a military or other official posting on behalf of His Majesty;
 - (c) “essential government work” means work which has been designated as such by the relevant Department, and includes, in particular, work related to national security, the work of the National Crime Agency in pursuance of its statutory functions, and work related to immigration, the coronavirus disease or any other crisis response;
 - (d) “essential policing” means policing which has been designated as such on behalf of the relevant chief officer or chief constable;
 - (e) “essential state business” means activity which has been designated as essential to the United Kingdom or His Majesty’s Government by the relevant Department, and includes, in particular, bilateral or multilateral discussions with another state or international organisation and visits to another state on behalf of the United Kingdom or His Majesty’s Government.

5.—(1) Any person in respect of whom the relevant Department has certified—

- (a) as being a person who is required to undertake essential or emergency work in the United Kingdom which is necessary to facilitate essential government work, or is returning from undertaking such work outside of the United Kingdom, and
- (b) that, as a result, the person cannot reasonably comply with the requirements of regulation 3.

(2) For the purposes of sub-paragraph (1) “essential government work” has the same meaning as in paragraph 4(2)(c).

6.—(1) A person (“P”) described in paragraph (a) of sub-paragraph (4) who meets the conditions set out in sub-paragraph (5).

- (2) A person (“P”) who is travelling to the United Kingdom to conduct official business who—
- (a) if P is described in paragraph (b) to (e) of sub-paragraph (4), meets the conditions set out in sub-paragraph (6);
 - (b) if P is described in paragraph (f) of sub-paragraph (4), meets the conditions set out in sub-paragraph (7).

(3) A person (“P”) described in paragraphs (g) or (h) of sub-paragraph (4) who is travelling to the United Kingdom to conduct official business with the United Kingdom and meets the conditions set out in sub-paragraph (8).

(4) A person who—

- (a) enjoys relevant immunities and privileges in the United Kingdom;

- (b) is an officer or servant of an international organisation;
 - (c) is employed by an international organisation as an expert or on a mission;
 - (d) is a representative to an international organisation;
 - (e) is a member of the official staff of a representative to an international organisation;
 - (f) is a representative of a foreign country or territory;
 - (g) is a representative of the government of a British overseas territory;
 - (h) is a specified person.
- (5) The conditions referred to in sub-paragraph (1) are that—
- (a) the stipulated person, or a person acting on their authority, confirms in writing to the Foreign, Commonwealth and Development Office that P is travelling to the United Kingdom, the office held by P, the capacity in which P is travelling to the United Kingdom and that the person considers that regulation 3 not apply to P, and
 - (b) prior to P's arrival in the United Kingdom, the Foreign, Commonwealth and Development Office has confirmed in writing to the person referred to in paragraph (a) that it considers P to fall within the description in sub-paragraph (4)(a) and that regulation 3 do not apply to P.
- (6) The conditions referred to in sub-paragraph (2)(a) are that—
- (a) the stipulated person, or a person acting on their authority, confirms in writing to the Foreign, Commonwealth and Development Office that P is required to undertake relevant work and that P cannot reasonably undertake the relevant work while complying with regulation 3, and
 - (b) prior to P's arrival in the United Kingdom, the Foreign, Commonwealth and Development Office has confirmed in writing to the person referred to in paragraph (a) that it considers P to be travelling to the United Kingdom to conduct the relevant work and that P cannot reasonably undertake the work while complying with regulation 3.
- (7) The conditions referred to in sub-paragraph (2)(b) are that—
- (a) the stipulated person, or a person acting on their authority, confirms in writing to the Foreign, Commonwealth and Development Office that—
 - (i) P is required to undertake relevant work relating to—
 - (aa) essential maintenance and repair of an information technology or security system necessary for the functioning of a mission or consular post in the United Kingdom which represents the relevant foreign country, or
 - (bb) the holding of an election or referendum in accordance with the laws or regulations of a foreign country or territory, and
 - (ii) P cannot reasonably undertake the relevant work while complying with regulation 3, and
 - (b) prior to P's arrival in the United Kingdom, the Foreign, Commonwealth and Development Office has confirmed in writing to the person referred to in paragraph (a) that it considers P to be travelling to the United Kingdom to conduct the relevant work and that P cannot reasonably undertake the work while complying with regulation 3.
- (8) The conditions referred to in sub-paragraph (3) are that—
- (a) where P is not a specified person—
 - (i) the stipulated person, or a person acting on their authority, confirms in writing to the Foreign, Commonwealth and Development Office that P is required to undertake relevant work and that P cannot reasonably undertake the relevant work while complying with regulation 3, and
 - (ii) prior to P's arrival in the United Kingdom, the Foreign, Commonwealth and Development Office has confirmed in writing to the person referred to in paragraph (a)(i) that P is travelling to the United Kingdom to conduct official business with the

United Kingdom and that P cannot reasonably undertake the work while complying with regulation 3;

- (b) where P is a specified person—
 - (i) P has been invited to the United Kingdom by the Secretary of State for Foreign, Commonwealth and Development Affairs; and
 - (ii) prior to P’s arrival in the United Kingdom, the Foreign, Commonwealth and Development Office has confirmed in writing to P that they are travelling to the United Kingdom to conduct official business with the United Kingdom and cannot reasonably conduct that business while complying with regulation 3.

(9) For the purposes of this paragraph—

- (a) “consular post” means any consulate-general, consulate, vice-consulate or consular agency;
- (b) “international organisation” means an international organisation accorded privileges and immunities in the United Kingdom;
- (c) “member of a consular post” means a “consular officer”, “consular employee” and “member of the service staff” as defined in Schedule 1 to the Consular Relations Act 1968(a), and “head of consular post” has the meaning given in that Schedule;
- (d) “relevant immunities and privileges” means inviolability, immunity from arrest or detention, or any immunity or privilege with equivalent effect which is accorded to any person under the law of England and Wales;
- (e) “relevant work” means—
 - (i) where P is a person described in sub-paragraph (4)(b), (c), (d) or (e), work which the relevant stipulated person confirms in writing to the Foreign, Commonwealth and Development Office is essential to the functioning of the relevant international organisation;
 - (ii) where P is a person described in sub-paragraph (4)(f), work which the relevant stipulated person confirms in writing to the Foreign, Commonwealth and Development Office is essential to the foreign country represented by the relevant mission or consular post in the United Kingdom or the foreign territory represented by the relevant office in the United Kingdom (as the case may be);
 - (iii) where P is a person described in sub-paragraph (4)(g), work which the relevant stipulated person confirms in writing to the Foreign, Commonwealth and Development Office is essential to the relevant British overseas territory;
- (f) “specified person” means a person who is a member of the democratic opposition in a foreign country or territory, a member of a political party in a foreign country or territory, or who undertakes activities in a foreign country or territory that support government policy related to national security, the promotion and protection of human rights, the mitigation of, or adaptation to, climate change, the maintenance of international peace and security, or the maintaining or enhancing of biodiversity;
- (g) “stipulated person” means—
 - (i) where P is a person described in sub-paragraph (4)(a), the head of the relevant international organisation, the relevant head of the mission or head of consular post in the United Kingdom or the relevant head of the office representing a foreign territory in the United Kingdom (as the case may be);
 - (ii) where P is a person described in sub-paragraph (4)(b), (c), (d) or (e), the head of the relevant international organisation;
 - (iii) where P is a person described in sub-paragraph (4)(f), the relevant head of the mission or head of consular post in the United Kingdom or the relevant head of the office representing a foreign territory in the United Kingdom (as the case may be);

(a) 1968 c. 18. There are amendments but none is relevant.

- (iv) where P is a person described in sub-paragraph (4)(g), the relevant Governor of a British overseas territory.

(10) Any exemption provided for in this Schedule is without prejudice to any immunity or privilege which is accorded to any person under the law of England and Wales.

7.—(1) A person who is a Crown servant, a government contractor, or a member of a visiting force, who is required to undertake work necessary to the delivery of essential defence activities.

(2) For the purposes of sub-paragraph (1)—

- (a) “defence” has the meaning given in section 2(4) of the Official Secrets Act 1989(a);
- (b) “visiting force” means any body, contingent or detachment of the forces of a country, being a body, contingent or detachment for the time being present in the United Kingdom (including United Kingdom territorial waters), on the invitation of His Majesty’s Government in the United Kingdom.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations introduce requirements in relation to people who arrive in England having boarded a flight that originated in the People’s Republic of China (excluding flights that originated from the Special Administrative Regions of Hong Kong or Macao). The Regulations relate to a requirement for such people to possess notification of a negative result from a test for SARS-CoV-2.

Part 2 provides, subject to exceptions specified in the Schedule, that adults must possess notification of a negative test result that complies with regulations 4 and 5 for themselves and any children with whom they are travelling. Part 2 also requires unaccompanied children aged between 12 and 17 to possess notification of a negative test result for themselves.

Part 3 requires operators of commercial services to implement and maintain systems to ensure that the people they carry possess the notification required by Part 2. Part 3 also requires operators to retain and provide records relating to compliance with these obligations.

Part 4 deals with enforcement, offences and penalties, including fixed penalty notices. It also provides for the expiry of these Regulations.

An impact assessment has not been produced for this instrument.

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