

EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL FROM CHINA) (ENGLAND) REGULATIONS 2023

2023 No. 2

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Department of Transport and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments

2. Purpose of the instrument

- 2.1 This instrument introduces requirements in relation to people travelling by air (directly or indirectly) to England from mainland China to possess a notification of a negative coronavirus test prior to arrival in England.
- 2.2 The instrument also introduces requirements for persons operating commercial transport services (“operators”) for passengers travelling to England from mainland China to implement and maintain adequate processes and systems to ensure passengers possess notification of a negative result from a PDT before they are allowed to travel.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Department regrets that this instrument is being laid in breach of the 21-day rule due to the urgency to take action in support of the health security of the United Kingdom.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument (that is the jurisdiction which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is where the instrument produces a practical effect) 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 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.
- 6.2 Part 2A of the 1984 Act, as inserted by the Health and Social Care Act 2008 (“the 2008 Act”), provides a legal basis to protect the public from threats arising from

infectious disease or contamination from chemicals or radiation, and includes powers to impose restrictions or requirements on people, and in relation to things and premises. Overall, the amended 1984 Act sets out a framework for health protection which requires much of the detailed provisions to be delivered through regulations.

- 6.3 Specifically, section 45B of the 1984 Act enables the appropriate Minister (defined in section 45T as the Secretary of State for England, or the Welsh Ministers for Wales) to make regulations for preventing danger to public health from conveyances (or the persons or articles on those conveyances) arriving at any place or for preventing the spread of infection or contamination by conveyances leaving any place. It also provides a power for regulations to give effect to international agreements or arrangements, for example World Health Organisation recommendations.
- 6.4 Section 45P(2) of the 1984 Act provides that the power to make regulations under Part 2A of the 1984 Act includes the power to make different provision for different cases or people or different areas, including to make different provision based on the purpose of the case.
- 6.5 Section 45F of the 1984 Act contains supplementary provision relating to regulations made under section 45B of that Act. Regulations made under section 45B may enable the delivery of the policy objective by: the creation of offences, for a court to order a convicted person to take or pay for remedial action, the execution and enforcement of restrictions and requirements imposed by the regulations, appeals, the levy of charges, compensation, incentive payments, and expenses.
- 6.6 This instrument is made under sections 45B, 45F(2) and 45P(2) of the 1984 Act to enable certain public health measures to be taken for the purpose of reducing the public health risks arising from the virus known as “Coronavirus” (SARS-CoV-2).
- 6.7 This new instrument would seek to enforce a requirement on persons travelling from China to evidence a negative SARS-CoV-2 test, taken within 2 days of departure. Since the start of the SARS-CoV-2 pandemic, similar instruments have been introduced imposing a similar regime to address specific health threats.
- 6.8 Part 2 provides, subject to exceptions specified in the Schedule, that persons described in Regulation 2 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.
- 6.9 Part 3 requires operators of commercial flight 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.
- 6.10 Part 4 deals with enforcement, offences and penalties, including fixed penalty notices. It also provides for the expiry of these Regulations.

7. Policy background

What is being done and why?

- 7.1 SARS-CoV-2 has been a known threat to the health security of the UK since 2020. Powers prescribed by Public Health (Control of Diseases) Act 1984 allow for secondary legislation to be enacted to take specific actions against emerging health threats. This instrument is in response to a specific SARS-CoV-2 risk emerging as a

result of Chinese Authorities removing travel restrictions. The key public health objective of the instrument is to reduce the proportion of travellers from China being infected with COVID-19 and thereby limit incursion of any potentially harmful variant into the UK from China. It also responds to China's lack of international cooperation in participating in virus reporting and monitoring systems.

- 7.2 Prior to the pandemic, in 2019 the UK received ~160,000 arrivals from China per month. With China removing travel restrictions and their lack of transparency on SARS-CoV-2 data, there is a concern in the international health community about risk of the virus and potentially harmful variants coming from the country. Due to this risk, other countries such as the US, Italy and Spain, among others, have enforced pre-departure test requirements.
- 7.3 This policy intention was publicly communicated by the UK Government on 30 December 2022. Since then, there has been widespread interest from Parliament, the media and industry.
- 7.4 This instrument does create new offences, but these are the same as previous Coronavirus regulations enforced. These are limited to summary convictions for individuals and operators who do not comply with the regulations, resulting in an increasing scaled of fixed penalty notices.
- 7.5 Certain people travelling to maintain essential supply chains, critical national infrastructure or to contribute to crisis response will be exempt from the requirements. These exemptions will be kept under constant review, and may be expanded if further exemptions are required, for example, to support critical national infrastructure or supply chains.
- 7.6 As this measure is to address a specific threat, the instrument does include a sunset clause with regulations ceasing to have effect from 4th April 2023. The situation will be continually monitored and if circumstances permit, the regulations will be relaxed.

8. European Union Withdrawal and Future Relationship

- 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 This instrument is not an amending instrument therefore no consolidation is necessary.

10. Consultation outcome

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

11. Guidance

- 11.1 We will be issuing guidance documents prior to the implementation date for the benefit of airline operators and passengers.
- 11.2 We are utilising a communication means by the industry regulator, Civil Aviation Authority, to issue a SIREN notice to notify industry of the impending application.

12. Impact

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

- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because of the urgency of the need for this legislation to address a health security risk.

13. Regulating small business

- 13.1 The legislation applies does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 This instrument ceases to have effect 4th April 2023. The legislation will be monitored through regular scientific advice on whether they are having a material or a marginal impact on the incidence of coronavirus within the UK.

15. Contact

- 15.1 Sevy Palmer at the Department for Transport Telephone: 07464 496415 or email: sevy.palmer@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Jasmine Banghard, Deputy Director for International Travel at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rt. Hon. Mark Harper MP, Secretary of State for Transport can confirm that this Explanatory Memorandum meets the required standard.