

## **EXPLANATORY MEMORANDUM TO**

### **THE HEALTH PROTECTION (CORONAVIRUS, PUBLIC HEALTH INFORMATION FOR PASSENGERS TRAVELLING TO ENGLAND) REGULATIONS 2020**

**2020 No. 567**

#### **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 This instrument imposes requirements on operators of commercial transport services for passengers travelling to England by sea, air or rail, from outside of the common travel area. Operators are required to ensure information is provided to passengers about coronavirus, coronavirus disease and related duties and public health guidance to all passengers. The information must be provided to passengers before they book their travel, when they check in and whilst they are on board the vessel, aircraft or train. The aim is to allow those wishing to travel to England to make an informed choice about whether to complete their journey and increase public awareness of, and thereby compliance with, public health measures to be taken to reduce the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease Covid-19.

#### **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 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”). The Regulations were made on 3rd June 2020 and will come into force on 8th June 2020.
- 3.2 It is the opinion of the Secretary of State for Transport that, by reason of urgency, it is necessary to depart from the 21-day rule. The requirement imposed by this instrument reinforces public health measures taken in response to the serious threat to public health posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) and the Secretary of State for Transport therefore considers that it should come into force as soon as possible.
- 3.3 The regulations include a sunset provision so that they will expire at the end of the period of 12 months beginning with the day on which they come into force.
- 3.4 The need for the requirement in the Regulations will be reviewed at least once every 21 days by the Secretary of State, with the first review carried out by 29th June. If, at any time, the Secretary of State considers that the requirement is no longer necessary or expedient for preventing danger to public health as a result of coronavirus or

coronavirus disease from vessels, aircraft or trains arriving at a port in England, he must place a statement to that effect on [www.gov.uk](http://www.gov.uk). This has the effect of suspending the requirement unless and until the Secretary of State's view changes, in which case he must make another statement to that effect. The period of time between such statements is known as an "exemption period". Before making any such statements, the Secretary of State must consult the Chief Medical Officer or a Deputy Chief Medical Officer of the Department of Health and Social Care.

***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)***

- 3.5 As the 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.

**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 Regulations are made under Part 2A of the Public Health (Control of Disease) Act 1984 (as inserted by the Health and Social Care Act 2008), in exercise of the powers conferred by sections 45B(1)(a) and (2)(e) and (g), and 45F(2) and 45P(2).
- 6.2 Section 45B of the Act provides for the making of health protection regulations concerning international travel etc. Under section 45B(1)(a), the appropriate Minister may by regulations make provision for preventing danger to public health from vessels, aircraft, trains or other conveyances arriving at any place. Under section 45B(2)(e), regulations made under subsection (1) may include provision for regulating the arrival of conveyances. The Regulations impose a requirement on operators of commercial transport services for passengers travelling to England by sea, air or rail to ensure provision of specified information so as to increase public awareness of, and thereby compliance with, public health measures to be taken to reduce the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).
- 6.3 Section 45F(2)(a) contains supplementary provision relating to regulations made under section 45B and provides that regulations made under section 45B may confer functions on persons. The Regulations impose a duty on the Secretary of State to review the need for the requirement at least once every 21 days. The Regulations confer two functions on the Secretary of State which may be performed by placing a statement on the gov.uk website. The Secretary of State may, from time to time, suspend the requirement by making a statement that the requirement is not considered necessary or expedient for preventing danger to public health. The Secretary of State may also specify the information to be provided and the manner in which it is to be provided at each stage of the passenger journey.

- 6.4 Under section 45B(2)(g) regulations may include provision requiring persons to provide information. The Regulations require operators to keep records of the steps taken to comply with the requirement imposed by the Regulations, so that authorised persons (see below) may audit compliance. Operators may therefore be required to provide authorised persons with copies of these records, or other information necessary to determine whether they have complied.
- 6.5 Section 45F provides that regulations made under section 45B may create offences and provide for the execution and enforcement of restrictions and requirements imposed by or under the regulations. The Regulations create three offences. An operator commits an offence if it fails to comply with the requirement to ensure the provision of information. This is a strict liability offence, except that there is a defence in relation to the booking or check-in stage where the operator can demonstrate that the booking or check-in process was not managed directly by them, and that they took reasonable steps to ensure compliance by the person managing that process (see paragraph 7.6 below). It is punishable on summary conviction by an unlimited fine. Authorised persons are empowered to issue fixed penalty notices to operators that fail to comply and payment of a £4,000 fixed penalty within 28 days of a notice being issued discharges liability to prosecution.
- 6.6 An operator also commits an offence if it fails, without reasonable excuse to keep records of the steps taken to comply with the information requirement, or to provide information to an authorised person when requested. These offences are punishable on summary conviction by a fine not exceeding level 4 on the standard scale.
- 6.7 Under section 45F(2)(a), functions relevant to monitoring compliance and enforcing the requirements are conferred on authorised persons. These functions include requesting information to assess compliance and, in the event of non-compliance, issuing fixed penalty notices or commencing proceedings.

## **7. Policy background**

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

- 7.1 The Government has already taken a number of steps to reduce the transmission rate of severe acute respiratory coronavirus 2 (SARS-CoV-2), including creation of public health guidance (published at [www.gov.uk/coronavirus](http://www.gov.uk/coronavirus)) on measures such as social distancing, hand-washing and self-isolation. This guidance has been informed by Public Health England and the latest scientific advice provided to the Government by the Scientific Advisory Group for Emergencies. In line with the World Health Organization general recommendations, which call for enhancing awareness through effective risk communication to the general public, the guidance has been widely publicised within the UK, with the aim of informing as many people as possible, and thereby securing the highest possible levels of compliance.
- 7.2 As the volume of international travel increases, the domestic transmission of severe acute respiratory coronavirus 2 (SARS-CoV-2) decreases, and domestic social contact increases as social distancing measures are relaxed, the relative importance of measures to reduce imported cases will also rise. It is important to ensure that those wishing to travel to England are fully informed, so that only those who are willing and able to comply with the relevant requirements and public health guidance complete their travel.

- 7.3 It is also important to ensure that, by the time they reach the point of entry, travellers have up-to-date information so that they know what is required of them immediately upon entry. Ensuring that people entering the UK have, and can comply with, up-to-date public health information will help to reduce the transmission of severe acute respiratory coronavirus 2 (SARS-CoV-2) and thereby prevent danger to public health from aircraft, trains and vessels arriving in England from outside the common travel area.
- 7.4 Coach and mini-bus operators are not within the scope of the Regulations, however, as coaches and mini-buses will enter England either on vessels or trains, passengers will be covered by virtue of being passengers on vessels or trains. Operators of commercial transport services by sea or rail are required to provide the information to such passengers and, by virtue of regulation 3(3) and (4), comply with this requirement if they provide the information to anyone making the booking or checking in on behalf of those passengers, including coach or mini-bus operators, with a written request that the information is provided to the passengers.
- 7.5 As one passenger may book or check-in on behalf of a group, an operator complies with the requirement where it provides information to the person booking or checking-in and requests that they provide that information to other passengers who they consider to be capable of understanding the information.
- 7.6 As bookings and check-in processes may be managed by third parties, operators will have a defence for not complying with the requirement if they take reasonable steps to ensure that the person managing those processes provides the information.
- 7.7 Not all relevant services have a booking or a check-in stage. In recognition of this, regulations 3(2)(a) and (b) provide that an operator is only required to provide information at those stages where such stages exist.

***How will the measures be implemented?***

- 7.8 The Regulations will compel transport operators to ensure provision of the specified information to passengers before booking, at the point of check-in and whilst passengers are on board. The information to be provided, and the manner in which it must be provided, will be specified by the Secretary of State and published on the gov.uk website. This information will comprise a short summary of the latest public health advice informed by Public Health England and information on the requirements introduced by the Health Protection (Coronavirus, International Travel) (England) Regulations 2020 to provide information for contact-tracing purposes and to self-isolate for 14 days upon arrival into the country. It will also explain where passengers can find more information on the UK's coronavirus measures by directing them to the relevant gov.uk page.
- 7.9 The Department for Transport will notify transport operators when there has been an update to the gov.uk page containing the specified information. Guidance for operators will also be included on the gov.uk website.
- 7.10 Operators are not required to provide information to passengers during an "exemption period". Operators will be able to check, on [www.gov.uk](http://www.gov.uk), for statements made by the Secretary of State to see whether an exemption period is subsisting at any given time. If the Secretary of State brings an exemption period to an end, he will specify the date and time from which operators must comply with the information requirement.

- 7.11 Such statements will also be available in hard copy from the Department for Transport upon request. Due to the closure of the Department's usual premises, requests for hard copy documents will need to be made using an online contact form (<https://forms.dft.gov.uk/contact-dft-and-agencies/>) or by telephoning 0300 330 3000 between 10am and 4pm, Monday to Friday. The information required to be provided to passengers, and the manner in which it must be provided, will also be available on [www.gov.uk](http://www.gov.uk) and in hard copy in this way.

*How will the measures be enforced?*

- 7.12 If an operator fails to comply with the requirement in respect of passengers arriving in England, it commits a criminal offence. The offence is summary-only and punishable by an unlimited fine. Operators will not be liable to prosecution if they pay a fixed penalty of £4,000 within 28 days of a fixed penalty notice being issued by an authorised person. Fixed penalties will be paid into the Consolidated Fund.
- 7.13 Operators are required to keep records of the steps taken to comply with the requirement and authorised persons may request information from them to monitor compliance. If an operator fails, without reasonable excuse, to keep records or to provide information to an authorised person, it commits an offence, punishable on summary conviction by a fine not exceeding level 4 on the standard scale.
- 7.14 The Regulations specify authorised persons, responsible for enforcement. These are the Civil Aviation Authority in relation to passengers arriving by air, the Office of Rail and Road in relation to passengers arriving by rail and the Secretary of State for Transport in relation to passengers arriving by sea. The Secretary of State for Transport's functions under these Regulations in relation to passengers arriving by sea will be exercised by the Maritime and Coastguard Agency which is an executive agency of the Department for Transport. Authorised persons may issue fixed penalty notices and commence criminal proceedings against operators in the event of non-compliance. Authorised persons may also request such information from an operator as is necessary to determine whether the requirement has been complied with.

**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 No consolidation is planned for these regulations

**10. Consultation outcome**

- 10.1 No formal consultation was required on the regulations due to the urgency of this measure.

**11. Guidance**

- 11.1 The Department for Transport is providing operational guidance to transport operators across all modes on how to implement the measures in the regulations. The Department has also issued a Notice to Airmen (NOTAM) to alert pilots to the measures in the Regulations.

## **12. Impact**

- 12.1 A full Impact Assessment, scrutinised by the Regulatory Policy Committee, has not been conducted due to the urgency of this measure. For Parliamentary scrutiny, limited analysis has been conducted and signed off by the Better Regulation Unit. However, an initial assessment indicates that impact of the Regulations on operators is low.
- 12.2 The costs and benefits of this policy cannot be fully quantified due to the nature of the pandemic. This policy forms one part of a larger package of measures that seek to minimise the health impacts of COVID-19 – the degree to which each policy has an impact can be difficult, if not impossible, to disaggregate.
- 12.3 Operators will incur familiarisation costs when the Regulations are put in place. This is the cost of employees reading the regulations and disseminating across the organisation. The Regulations are straightforward and not dissimilar from previous guidance (see paragraph 10.5 below); therefore, the time taken, and familiarisation cost, will be minimal.
- 12.4 It is not possible to directly attribute any specific benefit of the policy to a public health outcome, as these measures act as a vehicle to communicate and enable other health measures through ensuring passengers are aware of the latest advice such as social distancing guidelines. Without the requirement to provide information set out in these Regulations, the full benefits of these guidelines and advice may not be realised.
- 12.5 Before the coming into force of the Regulations, operators were asked to provide information to passengers on a voluntary basis so transition and familiarisation costs are expected to be low. Around 140 operators will be directly affected by the Regulations, with similar implementation costs across all three affected modes of transport. As operators already have systems in place to provide information to passengers at the booking, check-in and on-board stages of the passenger journey, the requirement to provide the information specified in these Regulations is expected to have minimal impact.

## **13. Regulating small business**

- 13.1 The instrument applies to all transport operators carrying international passengers into England, including small businesses.
- 13.2 The impact on small businesses is low. All transport operators have already been asked to voluntarily implement the measures in the Regulations, and have continued to provide updated information to passengers.

## **14. Monitoring & review**

- 14.1 A statutory review clause is included in the regulations, requiring a review at least every 21 days, with the first review carried out by 29<sup>th</sup> June.
- 14.2 While the Regulations are in force, the Secretary of State will consider whether the requirement in the Regulations is necessary or expedient for preventing danger to public health as a result of coronavirus or coronavirus disease from vessels, aircraft or trains arriving at a port in England. If the Secretary of State is of the view that the requirement is no longer necessary or expedient, he must make a statement to that effect, which has the effect of suspending the requirement to provide information by creating an “exemption period”. If the Secretary of State subsequently forms the view

that the requirement is necessary or expedient he must make a statement to that effect, which has the effect of re-activating the requirement.

- 14.3 The instrument ceases to have effect at the end of the period of twelve months beginning on the day on which it comes into force.

**15. Contact**

- 15.1 Anna Park at the Department for Transport email: [anna.park@dft.gov.uk](mailto:anna.park@dft.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Ian Elston, Deputy Director at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.