

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL)
(ENGLAND) REGULATIONS 2020

2020 No. 568

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (“the Department”) 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 Subject to specified exemptions, this instrument requires all passengers a) arriving in England from outside of the Common Travel Area or b) arriving in England from elsewhere in the Common Travel Area where they have been outside of the Common Travel Area in the past 14 days, to provide their personal and contact details, and travel information.
- 2.2 Subject to specified exemptions, this instrument also requires all passengers a) arriving in England from outside of the Common Travel Area, or b) arriving in England from elsewhere in the Common Travel Area where they have been outside of the Common Travel Area in the past 14 days, to separate themselves from any other persons for a period of 14 days (“self-isolation”).

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”). In response to the COVID-19 pandemic, urgent action is needed to limit the number of cases of COVID-19 imported into the UK and ensure these will not have a material impact on the domestic incidence of the virus. This is particularly important as the rate of domestic infections slows. If legislation is delayed, people arriving in England in the short-term will not be required to self-isolate for 14 days and will not, therefore, be required to significantly reduce their social contact as provided by this legislation. Accordingly, the risk of them transmitting the virus onward to the domestic population is increased, if they have contracted it or are infectious. Any delay will also mean that people arriving in England are not required to provide their contact details which are needed to support contact tracing and thereby reduce transmission of the virus. Both measures are designed to reduce the incidence of COVID-19 in the UK. Delaying their implementation could materially increase the incidence of the disease in the UK just as the number of domestic cases is falling.

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 The Secretary of State for Health and Social Care, Matt Hancock MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Health Protection (Coronavirus, International Travel) (England) Regulations 2020 are compatible with the Convention rights.”

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, for use in rare circumstances where voluntary cooperation cannot be obtained. 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 In response to the serious and imminent threat to public health posed by the incidence and spread of coronavirus in England, the Secretary of State for Health and Social Care has made certain regulations to reduce levels of social contact within England. Specifically, on 26th March 2020 the Secretary of State for Health and Social Care

made regulations (“the Restrictions Regulations”) to close businesses and premises, to restrict movement and to restrict gatherings for the length of the coronavirus emergency, in exercise of the powers conferred by sections 45C(1), (3)(c), (4)(d), 45F(2) and 45P of the 1984 Act¹. These Regulations were amended on 21st March 2020².

- 6.7 In response to the same serious and imminent threat to public health, the Coronavirus Act was introduced, and received Royal Assent on 25th March 2020. The Coronavirus Act provides powers for the Secretary of State for Health and Social Care to give a direction in writing to an operator of a port requiring the operator to suspend such relevant port operations. The Coronavirus Act also provides certain powers for public health officers in relation to potentially infectious persons. For the purposes of that Act, a person is “potentially infectious” if they are or may be infected or contaminated with coronavirus, and there is a risk they might infect or contaminate others; or the person has been in an infected area (as defined in the Act) within the past 14 days. Where a person is potentially infectious, a public health officer may require them to undergo screening and assessment. Where such a person has been screened and assessed for the virus (whether or not the screening is conclusive) or has been otherwise assessed by a public health officer and is suspected of being potentially infectious, the public health officer may impose further requirements and restrictions. These may include requiring the person to provide information and contact details, to undergo further screening, to remain in a certain place (including for self-isolation) or for the person’s movement to be otherwise restricted.
- 6.8 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 Wuhan novel coronavirus (2019-nCoV) (“Coronavirus”).
- 6.9 Regulation 3 of this instrument would require provision of passenger information on the Passenger Locator Form (“contact detail declarations”) from any person arriving in England from outside the Common Travel Area. The details that must be provided are set out in Schedule 1 to the instrument and include i) personal details, such as name, date of birth, passport details and contact details; ii) journey details, such as accommodation details or address, and date and time of arrival; iii) whether they are providing the requisite information on behalf of anyone else, iv) details of any children they are travelling with and v) emergency contact details, in each case, to aid contact tracing. Regulation 3 would also require such contact detail declarations from any person arriving in England from within the Common Travel Area who has been outside the Common Travel Area in the preceding 14 days, unless such person has arrived from Scotland, Wales or Northern Ireland and has already provided such information pursuant to the relevant legislation applicable in Scotland, Wales and Northern Ireland, as the case may be. Where a person is travelling with a child for whom they have responsibility, they must ensure that the relevant information is provided in relation to such child. There is a requirement for any person required by regulation 3, or any equivalent provisions in Scotland, Wales and Northern Ireland legislation, to provide the contact detail declaration to take reasonable steps to

¹ The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 SI 2020/350.

² The Health Protection (Coronavirus, Restrictions)(England)(Amendment) Regulations 2020 SI 2020/447.

complete a form as soon as reasonably possible via www.gov.uk. if their contact detail declaration changes or becomes available.

- 6.10 There are specified exemptions from the requirement to provide the contact detail declaration for certain people and certain categories of person, for example, diplomats and certain persons carrying out essential defence activities (as set out in Part 1 of Schedule 2 to the instrument).
- 6.11 Regulation 3(2) of this instrument would require a person presenting at immigration control at the Channel Tunnel shuttle terminal area in France, with the intention of boarding a shuttle service destined for the United Kingdom, to provide the contact detail declaration referred to in paragraph 6.9 above at the point they so present. For these purposes, “shuttle service” has the meaning given in section 1(9) of the Channel Tunnel Act 1987. Article 4(1) of the Channel Tunnel (International Arrangements) Order 1993 (S.I. 1993/1813) has the effect of extending all frontier control enactments to the control zone in France. A “frontier control enactment” is an enactment which contains provision relating to frontier controls and the definition of “frontier controls” in Schedule 1 to that Order includes controls in relation to health. This instrument, as being made under the Public Health (Control of Diseases) Act 1984, therefore applies in the control zone.
- 6.12 Regulation 4 of this instrument would require any person arriving in England from outside the Common Travel Area and any person arriving in England from elsewhere in the Common Travel Area where they have been outside the Common Travel Area in the preceding 14 days, to remain in isolation from others in accordance with the Regulations (“self-isolation”), for a period of 14 days from the date of their arrival in the Common Travel Area, or until their departure from England (whichever is earlier). The Regulations provide specified exceptions from the requirement to remain in self-isolation. These include, for example, leaving the place of self-isolation by reason of seeking urgent medical assistance, fulfilling a legal obligation, and in exceptional circumstances, to obtain basic necessities. People who temporarily cross over the border from Wales or Scotland into England for a reason falling within these exceptions do not have to self-isolate (regulation 4(12)). This is not applicable in relation to Northern Ireland which does not share a land border with England. There is also a specific exception to allow for travelling to the place of departure from England. Where the requirement to self-isolate falls upon a child, any person who has custody or charge of the child during the period of self-isolation must ensure that the child self-isolates in accordance with regulation 4. There are specified exemptions from the self-isolation requirement for certain people and categories of person, for example, people travelling to maintain essential supply chains, critical national infrastructure or to contribute to the crisis response (as set out in Parts 1 and 2 of Schedule 2 to the instrument). A modified self-isolation scheme for Seasonal Agricultural Workers (as set out in paragraph 38 of Schedule 2) provides that such workers are exempt from self-isolation within the bounds of a specified farm.
- 6.13 The express reference in regulation 4(13)(a) to certain persons listed in Part 1 of Schedule 2, exempting them from the requirements of regulation 4 and disappling regulation 4(3)(b) and (c), as the case may be, is to ensure that the treatment of members of the diplomatic community under the Regulations is fully in accordance with the provisions of the Vienna Convention on Diplomatic Relations. Similarly, such members of the diplomatic community are exempt from the requirement to provide the contact detail declaration, as provided by regulation 3(10).

- 6.14 The instrument provides that the contravention of the requirement to provide contact details, as provided by regulation 3 (without reasonable excuse), and the requirement to remain in isolation, as provided by regulation 4, are offences. It will also be an offence to provide, intentionally or recklessly, false or misleading information and, without reasonable excuse, wilfully to obstruct a person carrying out functions under the Regulations. Any such offence will be punishable on summary conviction by a fine.
- 6.15 The instrument also provides that a fixed penalty notice (a notice which enables a person to discharge their liability to criminal conviction) may be issued by authorised persons (constable, immigration officer or person designated by the Secretary of State) to persons 18 or over whom they reasonably believe has committed an offence under the Regulations. For offences relating to the requirement to self-isolate, the amount of the fixed penalty will be £1,000 for the first and all subsequent fixed penalty notices. For “information offences” (as defined), the amount of the fixed penalty will be £100, doubling in amount with each subsequent fixed penalty notice, up until the sixth and subsequent notices, for which the penalty will be £3,200.

7. Policy background

What is being done and why?

Why are measures needed?

- 7.1 The amendments to the 1984 Act made by the 2008 Act comprehensively modernised the legal framework for health protection. Part 2A of the 1984 Act, as inserted by the 2008 Act, takes an “all hazards” approach to health protection, where the criterion for action is based on the potential of an infection or contamination to present significant harm to humans, rather than on specific infectious diseases.
- 7.2 COVID-19 is a highly-transmittable virus, the infection fatality rate of which is probably around 1% though this can be significantly higher in certain sub-populations such as those aged 70 and over. As the UK moves to a situation where local incidence and prevalence is much lower relative to international incidence and prevalence, imported cases could become a higher proportion of the overall number of infections, and so preventing imported cases and preventing onward transmission from these cases will likely reduce incidence and prevalence. As social distancing measures are relaxed in the UK, the contact tracing programme will be relied upon to contribute to keeping the reproduction rate (‘R’) of COVID-19 below 1 by rapidly tracing the contacts of people with symptoms or a positive test of COVID-19 and providing them with appropriate advice and care. If early cases in a transmission chain are not rapidly identified and their contacts traced, a single imported or domestic case of COVID-19 could result in significant onward transmission within the UK. If and when passenger numbers increase, the relative impact of imported cases and onward transmission of coronavirus from these cases on the domestic incidence of coronavirus will rise. The number of passengers arriving in the UK has fallen by 95%, year on year due to the virus itself and international travel restrictions which have been applied in the majority of jurisdictions across the world, but can be expected to rebound as social distancing measures are relaxed.
- 7.3 The measures draw on passenger information and self-isolation requirements introduced around the world to prevent the cross-border transmission of coronavirus.

- 7.4 Measures to require all passengers arriving a) arriving in England from outside of the Common Travel Area, or b) arriving in England from elsewhere in the Common Travel Area where they have been outside of the Common Travel Area in the past 14 days to provide their contact details and onward travel information will aid the domestic contact tracing programme. The details will be used to protect the public's health and reduce transmission of COVID-19 in the UK. Once someone is confirmed as infected with COVID-19 who has travelled to England recently, the data will be rapidly interrogated to identify the people around them as they travelled i.e. their contacts. The information will then be used to inform those identified of their contact status, what it means, the actions that will follow, and what to do if they develop symptoms. Contacts will also be provided with information about prevention of the disease i.e. social distancing, hand hygiene, etc. If symptomatic, the contact will be reminded of the isolation requirements and informed of the testing process. The data will continue to be used to allow for follow-up by public health officials to monitor for symptoms. The details will also be used to enforce the 14-day self-isolation requirement for passengers.
- 7.5 Measures to require all passengers to self-isolate for 14 days will reduce the social contact of any passengers who import cases of COVID-19, and therefore reduce onward transmission contributing to the domestic incidence of coronavirus
- 7.6 Certain people travelling to maintain essential supply chains, critical national infrastructure or to contribute to crisis response will be exempt from the self-isolation requirements. Certain people will also be exempt from the requirement to provide the contact tracing details. 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. People travelling solely within the Common Travel Area who have not been outside the Common Travel Area in the preceding 14 days will not be required to self-isolate or complete contact details forms.

How will measures be enforced?

- 7.7 This instrument will provide powers to enforce the requirement for passengers to self-isolate and the requirement for passengers to provide their contact detail declaration.
- 7.8 These include powers for the Police to direct passengers to return to the place where they are self-isolating and to remove them there; and powers for the Police and Immigration Officers to issue a fixed penalty notice to anyone 18 or over where there is reason to believe they have committed an offence (for example by not complying with self-isolation requirements) – see paragraphs 6.14 and 6.15 above.

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 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 Guidance will be published on 14-day self-isolation for people arriving in the England and on contact detail declarations for people arriving in England. This guidance will be published prior to the implementation date.

12. Impact

- 12.1 The impact of coronavirus on businesses, charities or voluntary bodies has been significant. The purpose of Regulations is to reduce the domestic incidence of coronavirus, and therefore reduce the impact of the virus on businesses, charities or voluntary bodies.
- 12.2 The impact of coronavirus, international border restrictions and social distancing measures on the travel and tourism industries is significant, and it is challenging to disaggregate the impact of this instrument from wider challenges. 14 day self-isolation for passengers arriving from outside the Common Travel Area, or within the Common Travel Area where they have travelled from outside the Area in the last 14 days, will likely delay the rebound in passenger numbers, including business travellers and tourists with potentially significant further financial impacts for businesses in the travel and tourism sector, including international transport operators.
- 12.3 These measures will be reviewed every 21 days, and maintained only for as long as judged necessary. In any event they will cease to have effect twelve months from coming into force, as provided by the sunset clause in the regulations. Extensive support has already been introduced for industries affected by coronavirus.
- 12.4 The public sector is establishing the digital contact detail declaration system for passengers to use before travelling and facilitating a system for passengers who cannot self-isolate within their own accommodation to self-isolate safely. People travelling on public sector business will also be subject to 14-day self-isolation and contact detail declaration requirements, except where, for example, they are travelling for critical national infrastructure or to contribute to the crisis response as set out in the relevant exemptions under Schedule 2, Parts 1 and 2 of the Regulations.
- 12.5 An Impact Assessment has not been prepared for this instrument because this instrument is a temporary provision as part of the Government's response to COVID-19. As this instrument will cease to have effect after 12 months, a Regulatory Impact Assessment is not required and would be disproportionate.

13. Regulating small business

- 13.1 The legislation applies to all people arriving in England from outside of the Common Travel Area and those who have arrived in England from within the Common Travel Area having been outside the Area in the last 14 days, including people travelling for commercial reasons for small businesses.
- 13.2 To minimise the impact of the 14-day self-isolation requirement there are exemptions for certain people and categories of person to maintain essential supply chains, critical national infrastructure or to contribute to crisis response. These exemptions will reduce the impact of the requirement on small businesses (employing up to 50 people), where their employees are travelling for these purposes. A contact detail declaration will be required of passengers arriving in England from outside the Common Travel Area and those who have arrived in England from within the Common Travel Area having been outside the Area in the last 14 days, save for those

exempted under Part 1 of Schedule 2: this form should be accessed online before travel and can be completed in 10-20 minutes.

14. Monitoring & review

- 14.1 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. Prior to its expiry, the Secretary of State must review the need for restrictions imposed by the instrument every 21 days.
- 14.2 The legislation will be monitored through regular scientific advice on the domestic incidence of coronavirus, relative to the international incidence of coronavirus and the number of passengers arriving in the UK to ascertain whether international travel Regulations are having a material or a marginal impact on the incidence of coronavirus within the UK.

15. Contact

- 15.1 Georgina Stockley at the Department for Health and Social Care email: georginastockley@dhsc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Andrew Vereker, Deputy Director at the Department for Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Secretary of State at the Department for Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.