

EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL AND PUBLIC HEALTH INFORMATION) (ENGLAND) (AMENDMENT) REGULATIONS

2020 No. 691

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 This instrument makes certain amendments to the Health Protection (Coronavirus, International Travel) (England) Regulations 2020 (“the International Travel Regulations”) to take into account the outcome of the statutory review of those regulations, which was completed on 29th June 2020.
- 2.2 This instrument also makes an amendment to the Health Protection (Coronavirus, Public Health Information for Passengers Travelling to England) Regulations 2020 (“the Passenger Information Regulations”).

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”). It was not possible to make these amending regulations earlier, since they arise following the statutory review of the need for the requirements imposed by the International Travel Regulations that was completed on 29th June. These regulations remove the requirement on travellers to self-isolate on arrival in England in a number of circumstances. They have been laid as quickly as possible following the conclusion of that review and with a short interval before commencement so as to mitigate the restrictions on travellers and impact on business, particularly the travel and tourism industries, and to ensure that the requirements of the International Travel Regulations remain appropriate and proportionate.
- 3.2 In its Seventeenth Report of Session 2019-21, the Committee drew attention to regulation 4(4)(c) of the International Travel Regulations on the basis that the use of the word “suitable” was insufficiently clear when setting out acceptable places of self-isolation as including “a hotel, hostel, bed and breakfast accommodation or other suitable place”.
- 3.3 This instrument does not make amendments in relation to this point. The Department considers that “suitable” is capable of bearing its ordinary meaning in the context of the statutory framework of the International Travel Regulations and the Public Health

(Control of Disease) Act 1984. Whether a place is “suitable” will depend on whether it is an appropriate place in which to isolate oneself from others, for the duration prescribed by regulation 4, and in the context of the protection of public health. The Department will review its guidance with a view to considering appropriate clarification.

- 3.4 In that Report, the Committee also drew attention to the Passenger Information Regulations on the grounds that there is doubt as to whether regulations 4 and 5 are *intra vires*. The Department for Transport’s position is set out in the memorandum printed in that report. This instrument does not make amendments in relation to this point.

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 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 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 On 3rd June 2020, the Secretary of State for Health and Social Care made the International Travel Regulations under sections 45B, 45F(2) and 45P(2) of the 1984 Act. The International Travel Regulations came into force on 8th June 2020. Under those regulations, the Secretary of State must review the need for the requirements imposed by the regulations at least once every 21 days, with the first review being carried out by 29th June 2020. This instrument makes a number of changes to the International Travel Regulations following that review.
- 6.7 The International Travel Regulations were urgently implemented in order to reduce the likelihood that an increase in COVID-19 infections would arise as a result of imported cases. The Government introduced a self-isolation requirement for people arriving into England from all countries outside of the common travel area. The measure has been kept under review and, to ensure that the requirement is proportionate, this instrument amends the self-isolation requirement so that it applies only to individuals arriving in England from non-exempt countries. Exempt countries are those which are considered to present an acceptable level of risk from a public health perspective for passengers to enter the UK and which are listed in the Regulations. This instrument inserts a new Schedule A1 into the International Travel Regulations, which provides a list of “exempt countries and territories” (from which persons travelling to England will be exempt from the self-isolation requirement in regulation 4). The list in Schedule A1 will be kept under continual review in relation to the public health risks posed by persons travelling to England from outside the CTA.
- 6.8 This instrument makes a number of changes to the existing schedules to the International Travel Regulations. It amends Schedule 1 to make certain changes to the information that must be provided in the Passenger Locator Form. It also amends Parts 1 and 2 of Schedule 2, to make certain changes to the categories of persons who are exempt from the requirement in regulation 3 of the International Travel Regulations to provide passenger information or from the requirement in regulation 4 of those regulations to self-isolate.
- 6.9 Neither the amendments to the exemptions (Schedule 2 to the International Travel Regulations) which come into force on 7 July 2020 nor the new country exemptions (new Schedule A1 to those regulations) which come into force on 10 July 2020 will affect the self-isolation requirement for persons arriving in England before the coming into force of those respective amendments.
- 6.10 This instrument substitutes a new regulation 11 in the International Travel Regulations to provide that the statutory review period will be 28 days (rather than 21 days), with the next review taking place no later than 27 July 2020.
- 6.11 The Passenger Information Regulations were made at the same time as the International Travel Regulations. They require transport operators to ensure that passengers who arrive in England by sea, air or rail from outside of the Common Travel Area have been provided with information about Coronavirus duties and guidance (including what they are required to do under the International Travel Regulations).

- 6.12 This instrument substitutes a new regulation 9 of the Passenger Information Regulations to provide that the statutory review period will be 28 days (rather than 21 days), with the next review taking place no later than 27 July 2020.

7. Policy background

What is being done and why?

- 7.1 The International Travel Regulations were made on an urgent basis in order to reduce the likelihood that an increase in COVID-19 infections would arise as a result of imported cases. The measure was applied to people arriving in England from all countries outside of the common travel area, however the requirement has been kept under constant review with a view to ensuring that disadvantages arising from it can be minimised wherever appropriate and proportionate.
- 7.2 These amendments will now exempt people from the requirement to self-isolate where, during the 14 days preceding their arrival in England, they have only been in “exempt countries or territories”. Such countries and territories have been added to a list in the new Schedule 1A where the public health risk has been deemed sufficiently low. The list in Schedule 1A will be subject to on-going review and further countries will be added or removed informed by their risk status when it is appropriate and proportionate to do so.
- 7.3 The Passenger Locator Form will now ask people for the details of which countries or territories they have visited in the last 14 days, and the dates they were there. This will enable effective enforcement of the requirement to self-isolate if someone has been in a non-exempt country in the last 14 days (and the exemption from self-isolation where they have not). People who were in a non-exempt country within the last 14 days, but have travelled from an exempt country, will need to self-isolate for the ‘balance’ of 14 days after their arrival, counted from the time they were last in a non-exempt country.
- 7.4 The International Travel Regulations also contained exemptions for certain people and categories of person to maintain essential supply chains, key infrastructure or to contribute to crisis response. These amending regulations introduce a small number of additional exemptions, including partial exemptions from the requirement to self-isolate under regulation 4 of the International Travel Regulations for elite sportspeople (and persons who provide support or who are essential to the running of specified events) and persons engaged in film and high-end TV production. Transport crew who do not come into contact with passengers in the course of their work in specified circumstances will also be exempt from providing contact information (under regulation 3 of the International Travel Regulations), but where necessary in the event of possible contact with COVID-19 this information will be provided on their behalf by transport operators. Those specified circumstances are where transport crew are travelling on their journey to England only on a conveyance which does not carry passengers, is not accessible by passengers or if accessible by passengers, where passengers remain in their vehicles (while the crew is present in that area of the conveyance).
- ## **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 There are no plans to consolidate the International Travel Regulations.

10. Consultation outcome

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

11. Guidance

11.1 Guidance for the public and affected sectors has been published and can be found at: <https://www.gov.uk/government/publications/coronavirus-covid-19-how-to-self-isolate-when-you-travel-to-the-uk/coronavirus-covid-19-how-to-self-isolate-when-you-travel-to-the-uk>.

12. Impact

12.1 The impact of coronavirus on businesses, charities or voluntary bodies has been significant. The purpose of the International Travel Regulations is to reduce the domestic incidence of coronavirus.

12.2 The impact of the coronavirus pandemic on the travel and tourism industries has been significant, and it is challenging to disaggregate the impact of the International Travel Regulations from the wider consequences of the pandemic. The amendments being made by this instrument will, by exempting travellers from particular countries and territories and by introducing further sectoral exemptions, help balance the imposition of self-isolation measures with the economic and social costs.

12.3 These measures will be reviewed every 28 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.

12.4 An Impact Assessment has not been prepared for this instrument because this instrument is an urgent and temporary provision as part of the Government's response to COVID-19.

13. Regulating small business

13.1 The International Travel Regulations, as currently in force, apply 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. This impact on small businesses, while indirect, is mitigated by certain exemptions from the requirement to self-isolate in accordance with regulation 4.

13.2 These amending regulations create additional exemptions to further reduce the impact, including exempting travellers who have spent the last 14 days in an exempt country (which will increase the scope for businesses to operate in those countries without their staff or clients needing to self-isolate), and for additional professional situations.

14. Monitoring & review

14.1 The instrument does include a statutory review clause.

14.2 This instrument amends the International Travel Regulations and the expiry and review provisions set out in those regulations will continue to apply. The International Travel Regulations cease to have effect at the end of the period of twelve months

beginning on the day on which they came into force (8th June 2020). Prior to their expiry, the Secretary of State must review the need for restrictions imposed by the Regulations every 28 days (as amended by this instrument, see paragraph 6.10 above). The first review was carried out by 29th June 2020 and the next review will be carried out by 27th July 2020.

- 14.3 This instrument also amends the Health Protection (Coronavirus, Public Health Information for Passengers Travelling to England) Regulations 2020 and the expiry and review provisions set out in those regulations will continue to apply. Those regulations cease to have effect at the end of the period of twelve months beginning on the day on which they came into force (8 June 2020). Prior to their expiry, the Secretary of State must review the need for restrictions imposed by the Regulations every 28 days (as amended by this instrument, see paragraph 6.11 above). The first review was carried out by 29 June 2020 and the next review will be carried out by 27th July 2020.
- 14.4 Monitoring of the legislation will be informed by regular scientific advice on the domestic incidence and prevalence of coronavirus, relative to the incidence, prevalence, and trajectory of coronavirus in countries and territories overseas. This will contribute to ascertaining whether these 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 of Health and Social Care, email: georginastockley@dhsc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Andrew Vereker, Deputy Director for the Policy area, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Matt Hancock at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.