

EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (ENGLAND) (AMENDMENT) (NO. 17) REGULATIONS 2021

2021 No. 1210

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (DHSC) 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 amends the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 (S.I. 2021/582) (“the Regulations”) to update the list of category 3 countries and territories referred to colloquially and in guidance as the “Red List”. The “eligible traveller” category will be expanded to include individuals vaccinated in a larger number of countries. This will reduce the burden associated with the health measures at the border and after arriving and make it less complex to navigate.
- 2.2 The “eligible traveller” category will be extended to include individuals who have participated/are participating in advanced phases of approved Covid-19 clinical trials to the other countries designated as a Stringent Regulatory Authority (SRA) by the World Health Organisation (WHO), the European Medicines Agency (EMA) in addition to participants from the UK or USA who are already included in the Regulations. It will now also fully apply to individuals vaccinated in the British Overseas Territories and Crown Dependencies, and individuals clinically unable to receive vaccinations in Scotland. This will ensure that individuals vaccinated in the British Overseas Territories and Crown Dependencies are able to show proof of vaccine certification in the same manner as all other relevant countries and territories.
- 2.3 Furthermore, the requirement to have received a vaccine in a relevant country or the UK is being removed, but the requirement to have a vaccine certificate from a relevant country (or the NHS Covid Pass, EU DCC Card, or CDC Card where appropriate) is maintained. This will shift the focus of the list of “relevant countries” to refer to those countries where the UK recognises vaccine certification. Anyone who has received one of the 4 recognised vaccines anywhere in the world will only be able to benefit from eligible traveller status if they have received a vaccine certificate from a relevant country. This will negate the scenario in which an individual cannot be granted eligible traveller status because they have been vaccinated in one country but received proof of vaccination from another, whilst protecting public health considerations. The only exception is for travellers who have been vaccinated in the US, who still have to prove their right of residency in the US or use the NHS Covid Pass. Exemptions to the requirement to self-isolate when arriving from a non-red list country will be introduced and updated for specified categories of individuals, namely pork butchers and participants in the FIBA Europe Basketball Competitions.

- 2.4 Exemptions from the requirement to complete a Passenger Locator Form (PLF) will also be introduced for specified groups of transport workers, and passengers transiting airside through England. The instrument also introduces technical and operational amendments to reduce restrictions for passengers transiting through red-listed countries, to update the list of designated indirect red-list airports in England and to reduce the restrictions on the use of airport terminals designated for direct arrivals from red list countries. Consequential amendments are also being made to remove specific exemptions and travel bans which apply to red list countries only.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 DHSC 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”). Having reviewed the latest assessments of public health risk, the Government considers these measures are urgently necessary to protect public health whilst ensuring that restrictions in place remain proportionate. Provisions are delayed where possible. In this amendment, the provision to allow terminals at Heathrow and Birmingham airports to receive arrivals from non-red list countries will come into force at 4am on Monday 22nd November 2021

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 only.

5. European Convention on Human Rights

- 5.1 As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Part 2A of the Public Health (Control of Disease) Act 1984 provides a legislative framework for health protection in England and Wales. Section 45B(1) enables the appropriate Minister (defined in section 45T as, for England, the Secretary of State) to make regulations for preventing danger to public health from vessels, aircraft, trains or other conveyances arriving at any place and preventing the spread of infection or contamination by means of any vessel, aircraft, train or other conveyance leaving any place. Section 45P(2) provides that the power to make regulations includes the power to make different provision for different cases or areas.
- 6.2 The Secretary of State made The Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 7) Regulations 2021 on 12 February, which came into force on 15 February. The Health Protection (Coronavirus, International Travel) (England) Regulations 2020 were due to expire on 2 June 2021. They have now been replaced by The Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 (“the Regulations”) which came into force on 17 May. The Regulations are currently subject to a formal review at least once every 28 days. This document supports the formal review process and builds on the Explanatory Memorandums to previous amendments to the Regulations.

7. Policy background

What is being done and why?

- 7.1 This instrument updates the list of Category 3 countries and territories (colloquially known as “the red list”), as a part of the regular three-weekly review, to ensure that allocations align with the latest epidemiological and public health data.
- 7.2 Further updates are also made to take advantage of the increasing evidence of vaccine efficacy overseas by expanding the “eligible traveller” category to recognise vaccinations from a larger number of countries internationally. This will reduce the burden associated with the health measures at the border and after arriving and make it less complex to navigate for those arriving from non-red list countries, further facilitating family reconnections, holidays and business travel. Stringent public health measures, including managed quarantine, are retained for arrivals from red list countries if countries are added back on to the list. The instrument also introduces specific exemptions for select individuals relating to ensure that work and events of national importance can take place.
- 7.3 This instrument introduces and amends a number of exemptions from the requirement for specific individuals to complete a Passenger Locator Form (PLF) to streamline and simplify the job-related exemptions regime.
- 7.4 Amendments are also made in this instrument to correct an error arising in the Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 10) Regulations 2021.

This instrument amends the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 (S.I. 2021/582) (“the Regulations”) to bring the following provisions into force at 4am on Monday 1st November 2021, with the exception of the provision to allow terminals at Heathrow and Birmingham airports to receive arrivals from non-red list countries which will come into force at 4am on Monday 22nd November 2021:

- Remove all countries and territories from the list of category 3 countries and territories, referred to colloquially and in guidance as the “Red List”. The countries being removed are Peru, Ecuador, Colombia, Panama, Dominican Republic, Haiti, and Venezuela.
- Arising out of the removal of the above countries and territories from the red list is the need for the following change:
 - Removal of the Dominican Republic from the list of countries in the Regulations that prohibits passenger aircraft landing in England from red list countries with scheduled direct passenger flights to England.
- Add Angola, Azerbaijan, Belize, Costa Rica, Djibouti, Guyana, Honduras, Mauritius, Mongolia, Nepal, Panama, Peru, Rwanda, Seychelles, Suriname, Tanzania, Trinidad and Tobago, Tunisia, Uruguay, Anguilla, Armenia, Bermuda, Cambodia, Cayman Islands, Gibraltar, Lebanon, Madagascar, Occupied Palestinian Territories, Sierra Leone, Sri Lanka, Argentina, Botswana, Eswatini, Lesotho, and Uganda to the list of countries and territories in regulation 3A(4). If a traveller can show, using evidence issued by the competent health authority of any of these destinations, that they have been fully vaccinated with a vaccine which is authorised for supply in the UK (i.e. Pfizer/BioNTech, Oxford/AstraZenica, Moderna, Janssen) or the

manufacturer's equivalent in the relevant country, then they will meet the definition of "eligible traveller" and will not be required to self-isolate after arrival in England, take a pre-departure test or day 8 test. Another change will be made to the definition of 'UK vaccine roll-out overseas', so as to remove the reference to British Overseas Territories and Crown Dependencies. Accordingly, people vaccinated in these territories will now require proof of vaccine certification that meets the minimum dataset, in the same manner as all other relevant countries and territories.

- Update the provision to treat a person who has received one dose of a two-dose vaccine under the UK vaccine roll-out overseas and received the other dose in another country, as vaccinated under the UK vaccine roll-out overseas, which allows a person in this cohort to benefit from the requirement to simply provide proof of vaccination of the UK vaccine dose. A vaccine certificate is still required for the dose received in another country.
- Remove the requirement for a vaccinated eligible traveller to have received the vaccine in a relevant country or the UK, and update the definition of authorised vaccine to include any of the four vaccines that are recognised by the UK wherever they are administered in the world. The requirement to have a vaccine certificate from a relevant country in order to be an 'eligible traveller' is maintained, so that people who are vaccinated with one of the four vaccines in a non-relevant country are only able to benefit from the eligible traveller status if they have a vaccine certificate from a relevant country.
- Recognise as "eligible traveller" an individual who can show that they have previously participated, or are currently participating, in a Covid-19 vaccine clinical trial, that has reached at least Phase II or Phase III of the trial, in a WHO SRA country or the EMA through evidence which meets the minimum dataset. WHO SRA countries include Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, and Norway, alongside the UK and US who are already recognised.
- Update the provision to treat as "eligible traveller" an English resident who can show that a registered medical practitioner has advised that they should not be vaccinated for clinical reasons and can evidence this by a confirmation letter from the NHS in response to an NHS Covid pass medical exemption application or a maternity certificate (MAT B1). The provision also extends the 'eligible traveller' status to those who receive advice from a registered medical practitioner that they should not be vaccinated and can provide evidence issued by NHS Scotland.
- Introduce a modified self-isolation exemption to cover pork butchers (individuals carrying out specified activities relating to the slaughtering, butchering, preparation, and processing of pig meat at specified premises). This exemption applies to pork butchers with an offer of employment arriving in England from a non-red list country and will be removed when no longer needed.
- Amend Schedule 5 of the Regulations to add "FIBA Europe Basketball Competitions" which will be taking place from November this year.

- Introduce an exemption to the requirement to fill in a passenger locator form (PLF) for passengers who transit airside through England to a destination outside of the Common Travel Area without passing through immigration control, including red list arrivals.
- Introduce an exemption to the requirement to fill in a PLF for the following transport workers, including red list arrivals:
 - air crew, if travelling in the course of their work or for work purposes;
 - bus and coach drivers, if travelling in the course of their work;
 - international rail staff, if travelling in the course of their work;
 - port workers, if travelling in the course of their work;
 - inspectors and surveyors of ships, if travelling in the course of their work;
 - hauliers and haulier outreach workers if travelling in the course of their work; and
 - seafarers and maritime pilots, if travelling in the course of their work and on a vessel on which they work
- Amend the definition of ‘departing from or transiting through a country or territory’ to ensure that passengers who remain on board an aircraft or train whilst travelling through a country or who change aircraft without passing through immigration control are not treated as having departed from or transited through that country or territory.
- Allow airport operators to use the terminals at Heathrow and Birmingham airports which are designated to receive direct red-list arrivals to receive non-Schedule 11 passengers at times when those terminals are not processing direct red-list arrivals. This amendment will come into force on the 22nd November.
- Remove Newcastle International Airport from the list of designated airports accepting indirect red-list arrivals.
- Correct errors and oversights arising from the Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 10) Regulations 2021. Accordingly, the free issue procedure applies: Correction is to reference in the No. 10 Regulations from “specified competition” to “that elite sports event”.

Explanations

What did the law do before the changes made by this instrument?

- 7.5 The Regulations came into force on 17 May 2021 to deliver a package of enhanced border measures in response to the risk of importation of harmful variants of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in England. This included setting out the requirement for persons returning from areas where this risk is especially elevated (red list countries or territories) to book a managed quarantine hotel package. The Regulations were updated on 4 October 2021 to introduce a new system centred around the red list and to provide a new set of rules for non-red list arrivals which are determined by a traveller’s vaccination status. Robust health protection measures, including hotel quarantine, remain in place for red list arrivals. Vaccinated arrivals certified in specific countries, those who are participants or have

participated in clinical trials in the UK or USA and people who are not vaccinated for clinical reasons on the advice of a medical practitioner with evidence issued by the NHS, known as “Eligible travellers”, are required to take a day 2 test but are not required to self-isolate or take a pre-departure test or day 8 test when arriving in England, provided that they have not been in a red list country in the last 10 days. All other arrivals from non-red list countries are required to take a pre-departure test, book and take a day 2 and day 8 test and to self-isolate for 10 days. All individuals are required to fill in the Passenger Locator Form before arriving in the UK irrespective of vaccination status unless an exemption applies.

- 7.6 The Regulations also include a number of exemptions from self-isolation and/or testing requirements for a small proportion of people, this includes people travelling to the UK to maintain essential supply and business chains, critical national infrastructure or to contribute to crisis response or other key sectors, known as “sector exemptions”. Specific exemptions are also in place to successfully deliver a select number of events of cultural and national importance in the UK. All exemptions have been implemented alongside robust public health requirements in order to minimise any risk to public health.

Why is it being changed?

- 7.7 The list of Category 3 countries and territories (colloquially known as “the red list”) is being updated to remove the seven remaining countries listed under Category 3. The revisions to the country listing reflect the latest epidemiological data following the latest three-weekly red list review. The data indicates that stringent measures imposed on arrivals from existing red-list countries are no longer required. Category 3 will however still remain within the regulations to reflect potential changes to the red-list in future.
- 7.8 This instrument expands the “eligible traveller” category to recognise vaccinations received in a larger number of countries internationally. Additionally, it will ensure that individuals vaccinated in the British Overseas Territories and Crown Dependencies are included as ‘eligible travellers’ and able to show proof of vaccine certification in the same manner as all other relevant countries and territories (including as applies to mixed doses). The purpose of these changes is to further facilitate international travel by simplifying measures for travellers vaccinated with an equivalent vaccine in a wider range of countries, given that they have not been in a red list country in the last 10 days. This will reduce the burden of self-isolation and cost of testing for the traveller, as well as the impact on carriers, who perform checks. This builds on the existing list of recognised countries in the context of the altered epidemiological and immunological situation seen domestically and worldwide and the increased protection provided by effective vaccines.
- 7.9 The requirement to have received a vaccine in the UK or a relevant country will be removed from the Regulations, and the definition of authorised vaccine to include any of the four vaccines that are recognised by the UK wherever they are administered in the world. The requirement to show a vaccine certificate from a relevant country is maintained. The lists of “relevant countries” will therefore refer to those countries where the UK recognises the vaccine certification solutions. The purpose of this change is to allow those that have been vaccinated in one country but have proof from a relevant country to be recognised as an ‘eligible traveller’. The current public health position is that any of the four vaccines recognised by the UK are effective at reducing Covid transmission irrespective of where they have been administered, and

the public health focus has shifted from the location a traveller received the vaccine to the robustness of the vaccine certification issued by an individual country. Vaccine certification minimum dataset requirements were introduced in the Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 13) Regulations 2021 to increase certainty that the certificate reflected the traveller's true vaccine status. Where someone has received a vaccine in the US, the residency requirement (unless able to evidence it through an NHS Covid Pass) has been retained to mitigate the risk of fraud presented by the CDC Card.

- 7.10 This instrument will also expand the definition of eligible traveller to include individuals who can show that they have previously participated, or are currently participating, in a Covid-19 vaccine clinical trial in a WHO SRA country or the EMA which has reached at least Phase II or Phase III of the trial, and can provide of participation in that trial which meets the minimum dataset. This will reduce the burden of self-isolation and cost of testing for the traveller and is deemed a proportionate expansion to the policy to recognise the valuable contribution made by vaccine trial participants in SRA countries. Moreover, vaccines in advanced trial stages usually offer a very high level of protection to participants.
- 7.11 The eligible traveller category will also be expanded to include individuals clinically unable to receive vaccination through the recognition of MAT B1 certificate as a suitable form of evidence. It also amends the proof required for other individuals clinically exempt by amending the required evidence from the NHS Covid Pass to a letter issued by the NHS in response to an NHS Covid pass medical exemption application in order to ensure that those who are exempt are capable of evidencing it. The category has also expanded to include individuals who have been advised by a registered medical practitioner in NHS Scotland that for clinical reasons they should not be vaccinated. Certification issued by NHS Scotland (whether paper or electronic) will be accepted. The requirement to provide proof of a medical exemption via a confirmation letter, MAT B1 certificate or a certificate issued by NHS Scotland has also been put in place to reduce the likelihood of fraud. The expansion of this category is to ensure that individuals who are unable to receive a vaccination for medical reasons are not disproportionately disadvantaged.
- 7.12 This instrument will also introduce exemptions for specified categories of individuals. The requirement to self-isolate will be modified for pork butchers arriving in England from a non-red list country who have an offer of employment to carry out specified activities at specified premises. When not working, those pork butchers who are not fully vaccinated would still be required to self-isolate with persons living or working with them at a specified work site, and would be required to take rapid lateral flow tests on days 2, 5 and 8, and are advised to take LFDs twice a week thereafter. This measure will be introduced to prevent significant animal welfare issues that have arisen due to recent challenges to the pork industry, including the COVID-19 pandemic, disruption to export trade, shortages of CO2, and a shortage of skilled staff, particularly butchers, within the pig processing supply chain. This modified exemption is intended to mitigate staff shortages, in order to help prevent on- and off-farm culling of pigs which would prevent them from entering the food supply chain, and long-term economic damage to an important sector.
- 7.13 Schedule 5 of the Regulations will be amended to allow specific individuals arriving from non-red list countries to attend "FIBA Europe Basketball Competitions" which will take place in November this year. This exemption is deemed to be a proportionate

means of allowing sporting events which are of national importance to the UK to be successfully delivered whilst robustly protecting public health.

- 7.14 This instrument will also introduce an exemption to the requirement to complete a passenger locator form (PLF) for:
- passengers who transit airside through England without passing through immigration control, including red list arrivals, alongside specific groups of transport workers;
 - specified transport workers and crew who have travelled in the course of their work.

The purpose of these changes is to streamline and simplify the job-related exemptions regime following a review of work-related sectoral exemptions in line with changes to the wider international travel regime.

- 7.15 A change will be made to ensure that passengers who remain on board an aircraft or train whilst travelling through a country or who change aircraft without passing through immigration control are not treated as having ‘departed from or transited through that country or territory’. The purpose of this change is to simplify the current guidance for transiting passengers and operators, and to reduce potential public health risks as a direct result of congestion at UK border control.
- 7.16 This instrument will also update the regulations to allow airport operators to use the designated direct red-list terminals at Heathrow and Birmingham airports to receive other arrivals at times when those terminals are not processing direct red-list arrivals. Newcastle International Airport will also be removed from the list of designated airports accepting indirect red-list arrivals. These changes are due to the reduced number of passengers returning from red-list countries, and the need to offer greater flexibility to airports over the use of terminals.

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 2018.

9. Consolidation

- 9.1 This instrument does not consolidate any legislation and there are no plans to do so at this time.

10. Consultation outcome

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

11. Guidance

- 11.1 The Government has published guidance in relation to COVID-19 at <http://www.gov.uk/coronavirus> and this guidance will include any updated information in relation to these amendments.

12. Impact

- 12.1 An Impact Assessment has not been prepared for this instrument because it is a temporary measure which is part of the Government’s response to COVID-19. As the

Regulations, which this instrument amends, will cease to have effect on 16 May 2022 a Regulatory Impact Assessment is not required and would be disproportionate.

13. Regulating small business

13.1 This instrument applies to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Secretary of State must review the need for the requirements imposed by the Regulations, which this instrument amends, at least every 28 days as a result of a statutory review clause.

15. Contact

15.1 Francesco Browne at the Department of Health and Social Care, Email: francesco.browne@dhsc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Ronnie Haynes, Deputy Director for MQS, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 Maggie Throup, Parliamentary Under Secretary of State for Vaccines and Public Health at the Department of Health and Social Care, can confirm that this Explanatory Memorandum meets the required standard.