

EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (ENGLAND) (AMENDMENT) (NO. 18) REGULATIONS 2021

2021 No. 1289

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 ITOLRs”) to expand the “eligible traveller” category to recognise vaccinations certified by a larger number of countries, territories and states internationally, in line with the latest immunological picture. The definition of an “authorised vaccine” is being updated to include COVID-19 vaccinations authorised under the World Health Organisation Emergency Use List (WHO EUL), namely Sinopharm, Beijing, Sinovac and Covaxin, in addition to those vaccines already recognised. All individuals under the age of eighteen who have not been in a red list country in the previous ten days will also be treated as eligible travellers. A number of exemptions will be introduced and updated for specified categories of individuals, such as hauliers, as well as for events of national importance in the UK, for example the Future Tech Forum. The instrument will also correct minor errors identified in the ITOLRs.

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”). The Government considers these measures are urgently necessary to ensure that the public health restrictions in place remain proportionate, in the context of the evolving epidemiological and immunological picture.

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 45F enables the appropriate Minister to create offences, execute and enforce restrictions and requirements, and levy charges in relation to the regulations created under section 45B.
- 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 ITOLRs which came into force on 17 May. The ITOLRs are 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 ITOLRs.

7. Policy background

What is being done and why?

- 7.1 The instrument amends a number of requirements relating to the “eligible traveller” category to ensure that the provisions remain effective and proportionate, in line with public health aims. Amendments are made to take advantage of our increasing confidence in vaccination programmes overseas by expanding the “eligible traveller” category to recognise vaccinations certified by a larger number of countries internationally. To include; Belarus, Bolivia, Democratic Republic of the Congo, Dominican Republic, Ecuador, Laos, Libya, Malawi, Mozambique, Samoa, Senegal, Vanuatu, Zambia and Zimbabwe. This will reduce some of the costs associated with the travel system and make it less complex to navigate, further facilitating family reconnections, holidays and business travel. Stringent public health measures remain in place for unvaccinated arrivals.
- 7.2 The ITOLRs are also being updated to allow for the recognition of certain United States of America (USA) State level vaccine certificates as a part of the eligible traveller policy, where assessed as meeting UK minimum standards. The ITOLRs will now recognise the following certification issued by the following locations to provide accessible alternatives to the CDC card: New York (the Excelsior Pass Plus), California (the Digital COVID-19 Vaccine Record) and Washington State (WA Verify).
- 7.3 Separately, an interpretative provision is being added to ensure that any reference in the ITOLRs to a country excludes reference to overseas territories or dependencies of that country unless otherwise stated. This is to clarify and ensure that, whilst overseas territories and dependencies may utilise their respective mainland countries’ certification solutions to benefit from eligible traveller status, their own certification solutions will not be accepted as proof of vaccination, unless or until they are onboarded in their own right.

- 7.4 The ITOLRs will treat as eligible travellers all individuals under the age of eighteen, irrespective of their vaccination status, who have not visited a red-list country in the previous ten days, thus exempting them from self-isolation, as well as the requirements to take pre-departure and day 8 tests. The amendments will also ensure that children who are over the age of five who have not visited a red list country in the previous 10 days will be treated as eligible travellers for the purposes of taking a day 2 test. Children under five are already exempt from day 2 testing requirements. This amendment will simplify the measures applying to children which are complex and currently cause confusion amongst the public.. This update will make it easier for travelling families and children to comply with the inbound travel measures and has a low level of public health risk given that many travellers aged under eighteen already receive exemptions under the inbound vaccination policy. Further to this, the volume of children travelling is low in proportion to the total number of travellers.
- 7.5 The definition of an “authorised vaccine” is being updated to include COVID-19 vaccinations authorised under the WHO EUL, in addition to those vaccines already recognised. This will add Sinovac, Sinopharm Beijing and Covaxin. This will mean that individuals fully vaccinated with any of these vaccines, including through mixed doses, will qualify as an eligible traveller if they are able to provide certification to that effect from a country whose vaccine certificates we recognise at the border. This update takes advantage of the protection offered by these vaccines against hospitalisation and mortality to improve access to international travel whilst robustly protecting public health aims.
- 7.6 An update is also made to remove the requirement on individuals who received their course of vaccination or participated in a COVID-19 vaccine clinical trial in the USA to demonstrate through evidence that they are ordinarily resident in the USA. It also removes the requirement on operators to ensure that those travellers have evidence of residence in the USA. These requirements were originally implemented to reduce the public health risk associated with fraudulent use of the CDC card to gain eligible traveller status. However, there has been limited evidence to suggest that this requirement has successfully reduced this risk. Additionally, the USA is the only country with this additional requirement in place, despite the fact certification solutions are now recognised from other countries which present a similar level of fraud risk. Therefore, this update will ensure that the requirements applying to individuals vaccinated in the USA are proportionate to those requirements applying to individuals vaccinated across the rest of the world.
- 7.7 This instrument updates the list of accepted forms of proof of vaccination to include certification issued by a number of countries and territories that have secured equivalency status with the EU Digital COVID Certificate (EU DCC). This update takes advantage of our judgement that the EU implements a robust system for validating equivalency status to simplify certification at the border even where that certificate does not meet the minimum dataset. Because of the time required for those countries to transition to new certificates, the update will not prevent travellers from those countries from continuing to rely on a “vaccine certificate” that meets the minimum dataset. The update applies to the following countries: Albania, Armenia, Faroe Islands, Israel, Morocco, North Macedonia, Panama, Turkey and Ukraine. Separately, this amendment updates the ITOLRs to include a definition of the EU DCC. This will clarify the appropriate use of the EU DCC in regards to vaccine certification and pre-departure testing for both the public and operators.

- 7.8 This instrument amends an existing self-isolation exemption to remove the distinction between UK and non-UK residency for: bus and coach drivers, port workers, aircrew, hauliers, civil aviation inspectors, escorts of prisoners and people being extradited, foreign officials required to travel to the UK to undertake essential border security duties, haulier outreach workers, and international rail staff. This will ensure that these individuals will be fully exempt from the requirement to self-isolate, regardless of their country of ordinary residency, in order to effectively maintain essential supply and business chains and critical national infrastructure. This change is not considered to present a significant increase in the risk to public health due to the relatively small numbers of people in this cohort.
- 7.9 The instrument also updates the International Events Exemption to add the Future Tech Forum to the list of eligible events. This update will exempt all attendees that meet certain requirements from the requirement to complete the Passenger Locator Form, undertake a Day 2 test and self-isolate. This will allow the Prime Minister to deliver on his 2019 United Nations General Assembly commitment to facilitate open, future facing exchanges on the developments of the digital technology ecosystem by supporting the in-person attendance of States, organisations and experts at the event. All Future Tech Forum delegates will follow bespoke testing and health protocols. Additionally, an amendment is made to Schedule 5 to the ITOLRs to allow specific individuals to facilitate or participate in the Motorsport UK Jurassic X Prix and the Cage Warrior European Series. This will apply to elite sportspeople and their ancillary teams captured in paragraph 44 of Schedule 4 (for example trainers, medical support, competition officials and operational staff) who would otherwise be required to isolate after arrival.
- 7.10 This instrument amends the restriction on operators of designated red list terminals to prevent them from allowing category 3 arrivals to arrive at designated terminals when there are passengers other than Schedule 11 and category 3 arrivals being processed. This completes the provision which was included in Amendment 17 to the ITOLRs which prevents operators from allowing non-category 3/Schedule 11 arrivals to arrive at designated terminals when there are category 3 passengers being processed.
- 7.11 This instrument updates the URL and publication date of the guidance and minimum standards that private providers of day 2 LFD tests are required to comply with.
- 7.12 This instrument will also provide clarifications and correct a number of errors in the ITOLRs. Accordingly, the free issue procedure applies.

What will it do now?

- 7.13 This instrument will amend the ITOLRs to bring the following changes in to force at 4am on Monday 22nd November 2021:
- Add Belarus, Bolivia, Democratic Republic of the Congo, Dominican Republic, Ecuador, Laos, Libya, Malawi, Mozambique, Samoa, Senegal, Vanuatu, Zambia and Zimbabwe to the list of countries and territories from which we accept vaccine certificates. 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 (or the manufacturer’s equivalent in the relevant country), or a vaccine with WHO EUL status (Sinopharm Beijing, Sinovac and Covaxin), 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 and has the option of an LFD, instead of PCR, Day 2 test.

- Add a clarification that a reference to a ‘country’ to ensure that each country’s overseas territories are not included unless otherwise stated. This is to ensure that no vaccine certification issued by any individual overseas territory is accepted as proof of vaccine status for eligible travellers unless and until each overseas territory’s form of certification has been reviewed and added to the relevant country list. There is no change to the eligibility of someone from an overseas territory who has access to a mainland relevant country certification solution; they will continue to be able to avail themselves of that mainland certification to qualify as an eligible traveller.
- Treat as an eligible traveller all individuals under the age of eighteen, irrespective of their vaccination status, where they have not been in a red-list country in the previous ten days.
- Update the definition of “authorised vaccine” to include medicinal product for vaccination against COVID-19 authorised under the WHO EUL where certified by a relevant country.
- Remove the requirement on individuals who have received their course of doses or participated in a COVID-19 vaccine clinical trial in the United States of America to demonstrate through evidence that they are ordinarily resident in the USA.
- Permit individuals vaccinated in the United States of America to evidence that they meet the vaccination requirements of “eligible traveller” with the following vaccine certificates instead of the CDC card:
 - New York: Excelsior Pass Plus
 - California: Digital COVID-19 Vaccine Record
 - Washington State: WA Verify
- Define the EU Digital COVID certificate as a certificate of COVID-19 records issued by either a member state of the EU, EEA or EFTA or a European microstate.
- In relation to vaccine certification but not to pre-departure testing, make provision for a certificate issued by an approved third country or territory to be accepted. The approved third countries and territories are:
 - Albania
 - Armenia
 - Faroe Islands
 - Israel
 - Morocco
 - North Macedonia
 - Panama
 - Turkey
 - Ukraine
- Amend the current international events exemption to add the Future Tech Forum to the list of eligible events under para 1(2) of Schedule 4. The effect of which would be to exempt all registered event attendees travelling to the UK from

completing the Passenger Locator Form, undertaking a Day 2 test and self-isolation (if required).

- Remove the distinction between UK residents and non-UK residents for the purpose of exemptions from the requirement to self-isolate for certain job-based exemptions. With the exception of hauliers employed by non-EC licence holders, non-UK residents must currently self-isolate except when undertaking the exempt activity. Hauliers employed by non-EC licence holders are currently required to self-isolate in their vehicles whilst they are working if they are UK residents, and are required to self-isolate at all times if they are non-UK residents. The following groups will be fully exempt from self-isolation no matter their country of ordinary residency:
 - officials of foreign governments required to travel to the UK to undertake essential border security duties;
 - bus and coach drivers;
 - port workers;
 - aircrew;
 - international rail staff;
 - hauliers;
 - civil aviation inspectors;
 - escorts of prisoners and people being extradited; and
 - haulier outreach workers.
- Amend Schedule 5 of the ITOLRs to add the following events; Motorsport UK – Jurassic XPrix and Cage Warriors European Series.
- Amend the restriction on operators of designated red list terminals to prevent them from allowing category 3 arrivals to arrive at designated terminals when there are passengers other than Schedule 11 or category 3 arrivals being processed.
- Update the version of the minimum standards with which private providers of day 2 lateral flow test devices are required to declare that they comply to the latest published version. This is required to reflect a correction made on the 4th November 2021 to the guidance which accompanies the minimum standards published on 21 October 2021 referred to in paragraph 7B(1)(b) of Schedule 8 which did not accurately reflect the coming into force date of the requirements in paragraph 7B of Schedule 8, and the subsequent update on 16th November 2021 of the URL referred to in that provision as a result of a technical change to the gov.uk guidance pages
- Correct errors and oversights arising in the ITOLRs. Accordingly, the free issue procedure applies:
 - Correct a typographical error at Regulation 19(13A)(b)
 - Amend the definition of NHS Covid pass to make it grammatically correct

Explanations

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

- 7.14 The ITOLRs 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 ITOLRs 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 specified countries and people who are not vaccinated for clinical reasons on the advice of a medical practitioner with evidence issued by NHS England or NHS Scotland, known as "Eligible travellers", are required to take a day 2 test but are not be 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.

- 7.15 The ITOLRs 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.

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 ITOLRs, 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 ITOLRs, which this instrument amends, at least every 28 days as a result of a statutory review clause.

15. Contact

15.1 Jessica Sterling at the Department of Health and Social Care, Email: Jessica.Sterling@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 Lord Kamall, Parliamentary Under-Secretary of State for Technology, Innovation and Life Sciences at the Department of Health and Social Care, can confirm that this Explanatory Memorandum meets the required standard.