

EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (ENGLAND) (AMENDMENT) REGULATIONS 2021

2021 No. 589

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 (S.I. 2021/582) (“the International Travel and Operator Liability Regulations”) to remove the exemption from managed self-isolation for seafarers and inspectors/surveyors of ships working on cruise ships. It also corrects errors in the International Travel and Operator Liability 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. This instrument is being brought into force promptly to exclude those working on cruise ships from the exemption (in Schedule 11) from managed self-isolation. It also corrects errors to (among other things) ensure that Part 4 (operator liability) of the International Travel and Operator Liability Regulations applies as intended to maritime and rail operators. The Department has advised the relevant enforcement bodies of the issue and its impact on operator liability for passengers arriving between 04:00 on 17th May and 04:00 on 19th May.

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 As the instrument is subject to 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. Section 45F makes supplementary provision relating to regulations made under section 45B - they may include provisions relating to the conferral of functions, creation of offences, the execution and enforcement of restrictions and requirements imposed by the regulations and the levy of charges.
- 6.2 The Health Protection (Coronavirus, International Travel) (England) Regulations 2020 came into force on 8th June 2020 and required people arriving in England from (i) outside the common travel area or (ii) elsewhere in the common travel area where they had been outside the common travel area in the previous 14 days to (a) self-isolate and (b) provide their personal details and travel information. The 14-day period was later shortened to 10 days following advice from the Chief Medical Officer. Other significant changes between June 2020 and May 2021 included:
- the introduction (and later suspension) of travel corridors – countries and territories from which arrivals did not have to self-isolate upon arrival in England;
 - requiring people arriving in England from outside the common travel area to possess notification of a negative coronavirus test result (known as ‘Pre-Departure Testing’);
 - introducing enhanced measures, including requiring arrival at designated ports/airports and self-isolation in managed accommodation, for arrivals from countries and territories assessed as posing (or potentially posing) an acute risk to public health (known as ‘red list’ countries and territories);
 - allowing a person arriving from a country or territory (other than one on the red list) to leave self-isolation upon receipt of a negative test result;
 - prohibiting the arrival of vessels and aircraft in England directly from certain red list countries and territories;
 - introducing requirements for tests to be taken after arrival in England, with separate regimes for the general public and specific workforces; and
 - introducing a small number of exemptions from various requirements for individuals whose jobs are critical to maintaining the flow of critical goods, protecting essential services or facilitating Government work.
- 6.3 The 2020 Regulations were complemented by the Health Protection (Coronavirus, Public Health Information for International Passengers) (England) Regulations 2020 and the Health Protection (Coronavirus, Pre-Departure Testing and Operator Liability) (England) (Amendment) Regulations 2021, which collectively required the operators of commercial transport services to ensure that passengers had complied with applicable requirements before arriving in England and were provided with public health information before and during travel.

- 6.4 That legislation was revoked and replaced in a consolidated instrument by the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 (S.I. 2021/582), which came into force on 17th May 2021 and also introduced the ‘green’ listing of countries and territories into legislation (referred to as category 1).

7. Policy background

What is being done and why?

- 7.1 The International Travel and Operator Liability Regulations set out requirements for persons arriving in England from outside of the common travel area (directly or indirectly). These measures are designed to reduce the public health risks posed by the spread of COVID-19, in particular the risks of a variant of concern or high-risk variant under investigation being imported to the UK.
- 7.2 The identification of new variants of COVID-19 and the possibility of a variant of concern arising with higher transmission rates or the potential to affect vaccine efficacy could have significant adverse effects on the UK’s public health. In response to this threat, the Government mandated a new managed quarantine service – managed self-isolation - which set out new requirements for people who had travelled from a country subject to additional measures (or been in one in the 10 days prior to arrival in England) to self-isolate in designated accommodation for 10 days. These countries are commonly known as ‘red listed’ countries and are now listed in Schedule 3 to the International Travel and Operator Liability Regulations.
- 7.3 The International Travel and Operator Liability Regulations also provide for a small number of exemptions from various requirements for individuals whose jobs are critical to maintaining the flow of critical goods, protecting essential services or facilitating Government work. A full list of exemptions is available online at: <https://www.gov.uk/government/publications/coronavirus-covid-19-travellers-exempt-from-uk-border-rules/coronavirus-covid-19-travellers-exempt-from-uk-border-rules>.
- 7.4 This list includes ‘seamen and masters’ and ‘inspectors and surveyors of ships’ who were exempted from several requirements including the requirements for passengers who have been in a red-list country in the 10 days before arrival in England. This is to ensure that the critical roles they perform in ensuring the flow of goods into and out of the country can continue.
- 7.5 Given the increased risk from Variants of Concern in countries on the red list, this instrument restricts the exemptions for ‘seamen and masters’ and ‘inspectors and surveyors of ships’ from red-list requirements so that it does not apply to those working on cruise ships. This will mean that seafarers working on cruise ships will be required to enter managed quarantine hotels if they have been in a red list country in the last 10 days, as well as possess a booking for tests on Day 2 and Day 8 after their arrival, in addition to completing the PLF which they are already required to do when travelling as passengers. This will reduce the social contact of cruise workers with UK residents and therefore reduce onward transmission contributing to the domestic incidence of coronavirus.
- 7.6 Other seafarers will continue to be exempt from those requirements.

7.7 This instrument also addresses errors in the International Travel and Operator Liability Regulations: correcting a typographical error in regulation 9(17) and two cross-references in paragraph 2 of Schedule 6 and, more substantively, amending provisions relating to operator liability to ensure that they function as intended in relation to air, sea and rail journeys as they did in the regulations which the International Travel and Operator Liability Regulations consolidated. The liability of the operators of Channel Tunnel shuttle services (but not passenger trains) under Part 4 generally and rail/maritime operators under regulation 18 was not certain as a result of these errors and so this instrument rectifies this; the liability of aviation carriers was not affected by the errors.

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.

9. Consolidation

9.1 None planned; the relevant legislation was recently consolidated.

10. Consultation outcome

10.1 There has been no public consultation on this instrument.

11. Guidance

11.1 Guidance on international travel for the public and affected sectors is available online at <https://www.gov.uk/government/collections/coronavirus-covid-19-transport-and-travel-guidance#overseas-travel>.

12. Impact

12.1 An Impact Assessment has not been prepared for this instrument because the provisions affecting business will have effect for a period of less than 12 months.

12.2 The measures enacted by this instrument will have an impact on affected travellers, members of their households and businesses but that impact is set against the role that these measures play in reducing the spread of coronavirus.

13. Regulating small business

13.1 The International Travel and Operator Liability Regulations apply to people travelling in the course of activities undertaken for small businesses, unless they are within any of the exemptions in Schedule 4 to those Regulations.

13.2 The measures enacted by this instrument will have an impact on small businesses but that impact is set against the role that these measures play in reducing the spread of coronavirus.

14. Monitoring & review

14.1 The International Travel and Operator Liability Regulations include a statutory review provision requiring them to be reviewed by 14th June 2021, and at least every 28 days thereafter. Those review provisions are unaffected by this amending instrument.

14.2 The International Travel and Operator Liability Regulations will cease to have effect at the end of 16th May 2022, if not revoked earlier.

14.3 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 the International Travel and Operator Liability Regulations are having a material or a marginal impact on the incidence of coronavirus in the United Kingdom and whether any exemptions remain sufficiently safe.

15. Contact

15.1 Claire Rackley (Claire.Rackley@dft.gov.uk), can be contacted with any queries regarding the instrument.

15.2 Lola Fadina (Lola.Fadina@dft.gov.uk) Deputy Director for the policy area at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robert Courts MP, Parliamentary Under Secretary of State for Transport, can confirm that this Explanatory Memorandum meets the required standard.