

EXPLANATORY MEMORANDUM TO

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

2021 No. 68

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 adds the Democratic Republic of the Congo and Tanzania to the list, in Schedule B1 to the Health Protection (Coronavirus, International Travel) (England) Regulations 2020 (S.I. 2020/568) (“the International Travel Regulations”) International Travel Regulations, of countries and territories subject to additional measures.
- 2.2 This instrument also makes amendments to the International Travel Regulations, the Health Protection (Coronavirus, Pre-Departure Testing and Operator Liability) (England) (Amendment) Regulations 2021 (S.I. 2021/38) (“the PDT Regulations”) and the Health Protection (Coronavirus, Public Health Information for Passengers Travelling to England) Regulations 2020 (S.I. 2020/567) (“the Passenger Information Regulations”) following the introduction of the pre-departure testing (“PDT”) regime.
- 2.3 The PDT Regulations were made on 14th January 2021. They introduced requirements for people arriving in England from outside the common travel area to undergo pre-departure testing. The PDT Regulations also introduced requirements for operators of commercial transport services to ensure that people arriving in England on their services, or presenting at immigration control at the Channel Tunnel shuttle terminal area in France with the intention of boarding a shuttle service to the United Kingdom, possess notification of a negative coronavirus test result and have completed a Passenger Locator Form (“PLF”).
- 2.4 Following the introduction of the PDT regime, this instrument: a) amends the Passenger Information Regulations to require operators to provide passengers with information about the PDT requirement; b) updates the air crew exemption from the requirement to possess notification of a negative coronavirus test result so as to ensure all crew intended to be exempt are exempt; c) amends the International Travel Regulations to reduce the amount of information that passengers are required to provide on the PLF; and d) amends the PDT Regulations so that operators are not required to ensure that the notifications possessed by passengers are from a “qualifying test”.

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”). Having reviewed the latest public health assessment from the Joint Biosecurity Centre and Public Health England, the Government considers that urgent action is required to prevent, insofar as possible, the spread of the variant of COVID-19 first identified in South Africa from the Democratic Republic of the Congo and Tanzania these countries to England. It is therefore considered urgent that people arriving in England who have, within the 10 days preceding their arrival, been in or departed through these countries, are subject to additional measures as soon as possible.
- 3.2 In addition, the Department considers that the amendments made by this instrument to the PDT Regulations, the Passenger Information Regulations and the International Travel Regulations are vital for ensuring that the recently-introduced PDT regime functions effectively.
- 3.3 The removal of several information fields from the PLF is designed to simplify the form, which in turn should increase PLF completion levels. As data collected in PLFs is used to facilitate the domestic contact tracing programme and is important for monitoring and enforcing the self-isolation requirement (regulation 4 of the International Travel Regulations), high levels of PLF completion are important for safeguarding public health. Accordingly, the Government considers that it is urgent that the simplification measures are brought into force as soon as possible to drive up PLF completion rates.
- 3.4 In the particular circumstances, the Government considers it necessary to act with extreme urgency and to bring this instrument into force before it is laid before Parliament; it will be laid at the earliest possible opportunity.

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 legislative context is set out in paragraphs 6.1 to 6.5 of the Explanatory Memorandum to the International Travel Regulations, available online at https://www.legislation.gov.uk/ukxi/2020/568/pdfs/ukxiem_20200568_en.pdf. In summary, 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. Section 45B(1) of the 1984 Act 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.

- 6.2 On 2nd 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 and introduced a requirement (“the requirement to provide information”) for people: i) arriving in England from outside the common travel area; or ii) arriving in England from elsewhere in the common travel area where they have been outside the common travel area in the past 10¹ days, to provide their personal and contact details, and travel information. This information must be provided on a PLF.
- 6.3 The International Travel Regulations also require people arriving in England to self-isolate until 10 days have passed since the day after they last departed from or transited through a non-exempt country or territory (“the requirement to self-isolate”, regulation 4 of the International Travel Regulations). A non-exempt country or territory is a country or territory, or part of a country or territory, which is not listed in Schedule A1 to the International Travel Regulations. The International Travel Regulations were amended by the Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 4) Regulations 2021 (S.I. 2021/49) so that, as of 4.00 a.m. on 18th January 2021, there are no exempt countries or territories.
- 6.4 These requirements were implemented urgently to reduce the likelihood that an increase in COVID-19 infections would arise as a result of imported cases. There are sector-specific exemptions to the requirements, set out in Schedule 2 to the International Travel Regulations. These include an exemption for certain types of aircraft crew (paragraph 4E of Schedule 2). Exempt crew are not required to comply with the requirement to self-isolate, nor with the requirement to provide information, so long as they do not come into contact with passengers (i.e. meet the requirement in paragraph 4G of Schedule 2 to the International Travel Regulations). Paragraph 4E does not apply to loadmasters.
- 6.5 Schedule B1 to the International Travel Regulations, which sets out countries and territories from which arrivals are subject to additional measures, was introduced by the Health Protection (Coronavirus, Travel from South Africa) (England) Regulations 2020 (S.I. 2020/1644) following the identification of a new variant of coronavirus in South Africa. Angola, Botswana, Eswatini, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, Zambia and Zimbabwe were added to Schedule B1 by the Health Protection (Coronavirus, International Travel) (England) (Amendment) Regulations 2021 (S.I. 2021/18). In response to concerns about a new variant identified in Brazil, Argentina, Bolivia, Brazil, Cape Verde, Chile, Colombia, Ecuador, French Guiana, Guyana, Madeira, Panama, Paraguay, Peru, Portugal, Suriname, the Azores, Uruguay and Venezuela were added to Schedule B1 by the Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 3) Regulations 2021 (S.I. 2021/47).

¹Note that following advice from the Chief Medical Officer the period of 14 days was shortened to 10 days by the Health Protection (Coronavirus, International Travel and Public Health Information) (England) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/1517).

- 6.6 On 3rd June 2020, the Secretary of State for Transport made the Passenger Information Regulations under sections 45B, 45F(2) and 45P(2) of the 1984 Act, introducing a requirement for operators of commercial transport services to England from outside the common travel area to provide information about coronavirus-related public health advice and duties to passengers.
- 6.7 On 14th January 2021, the Secretary of State for Transport made the PDT Regulations, also under sections 45B, 45F(2) and 45P(2) of the 1984 Act. The PDT Regulations amended the International Travel Regulations so as to require people arriving in England from outside the common travel area to possess notification of a negative coronavirus test result (regulation 3A of the International Travel Regulations). That notification must show the result of a “qualifying test”, i.e. a test which complies with the requirements set out in paragraph 1 of Schedule 2B to the International Travel Regulations. The requirement is subject to exemptions, including an exemption for certain aircraft crew.
- 6.8 The PDT Regulations also introduced requirements for operators of commercial transport services to ensure that passengers arriving at a port in England on their services, or presenting at the immigration control point at the Channel Tunnel shuttle terminal area in France, possess notification of a negative coronavirus test result and have completed a PLF. The first requirement came into force at 4.00 a.m. on 15th January 2021, the second requirement will come into force on 1st February 2021.

7. Policy background

What is being done and why?

- 7.1 The Joint Biosecurity Centre has identified Tanzania and the Democratic Republic of the Congo as countries likely to have community transmission of the variant of COVID-19 first detected in South Africa. The Government is acting urgently on advice from the Joint Biosecurity Centre and Public Health England to prevent, insofar as possible, the new variant from spreading to England by subjecting people arriving in England who have departed from or transited through either of these countries in the 10 days preceding their arrival to additional measures. A full explanation of the additional measures can be found in the explanatory memorandum to S.I. 2020/1644.
- 7.2 The requirement (under regulation 3A of the International Travel Regulations) for people arriving in England to possess notification of a negative coronavirus test came into force at 4.00 a.m. on 15th January 2021 (although it did not affect people arriving before 4.00 a.m. on 18th January 2021). In order to ensure that as many people as possible are aware of this new requirement, the Department considers that transport operators should be required to provide information about PDT to passengers. Accordingly, this instrument amends the Passenger Information Regulations so that operators must provide such information to passengers at the booking and check-in stages of the passenger journey, as well as 24 to 48 hours before departure.
- 7.3 The definition of aircraft crew relevant to the sector-specific exemptions to the requirements in regulations 3, 3A and 4 of the International Travel Regulations does not cover loadmasters. The amendments made by this instrument ensure that crew who perform duties onboard aircraft in the interests of the safety of the aircraft, such as loadmasters, are exempt from the requirement to possess notification of a negative coronavirus test result.

- 7.4 The Government considers that high rates of PLF completion are important from a public health perspective as data from the PLF is used to monitor and enforce the self-isolation requirement under the International Travel Regulations and to facilitate the domestic contact tracing regime. In order to drive up PLF completion rates, the form is being simplified and streamlined by removing information fields where it is possible to do so without undermining the public health benefits provided by the PLF. Accordingly, this instrument removes several fields from Schedule 1 to the International Travel Regulations.
- 7.5 The PDT Regulations require people arriving in England from outside the common travel area to possess notification of a negative result from a qualifying test. A qualifying test is one which meets the criteria set out in paragraph 1 of Schedule 2B to the International Travel Regulations, including that the test is undertaken using a device which the manufacturer states has a sensitivity of at least 80% and a specificity of at least 97%.
- 7.6 The PDT Regulations introduced a requirement for operators to ensure that passengers arriving in England on their services, or presenting at immigration control at the Channel Tunnel shuttle terminal area in France with the intention of boarding a shuttle service to the United Kingdom, possess a valid notification of a negative test result from a qualifying test. Monitoring of the PDT regime following its recent implementation indicates that, in practice, information about the sensitivity and specificity of the device used is not routinely provided on coronavirus test notifications. As operators would therefore not be in a position to assure themselves that a notification possessed by a passenger was from a qualifying test, the requirement for operators is being amended. Operators will need to ensure that passengers possess a notification of a coronavirus test result which contains the information set out in paragraph 2 of Schedule 2B to the International Travel Regulations.

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 relevant instruments.

10. Consultation outcome

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

11. Guidance

- 11.1 Guidance for the public has been published and can be viewed at:
<https://www.gov.uk/guidance/coronavirus-covid-19-testing-for-people-travelling-toengland>.

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.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses. We are not aware of any operators who are small businesses.

14. Monitoring & review

- 14.1 The International Travel Regulations, the Passenger Information Regulations and the PDT Regulations include statutory review provisions requiring them to be reviewed at least once every 28 days. Those review provisions are unaffected by this amending instrument.
- 14.2 The International Travel Regulations, the Passenger Information Regulations and the PDT Regulations will cease to have effect on 7th June 2021.
- 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 regulations are having a material or a marginal impact on the incidence of coronavirus in the United Kingdom.

15. Contact

- 15.1 Sevvv Palmer at the Department for Transport, (Sevvv.Palmer@dft.gov.uk), can be contacted with any queries regarding the instrument.
- 15.2 Kashif Chaudry, Deputy Director 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.