

## EXPLANATORY MEMORANDUM TO

### THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL AND OPERATOR LIABILITY) (ENGLAND) (AMENDMENT) (NO. 6) REGULATIONS 2021

2021 NO. 865

#### 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 (“the Regulations”) to introduce an exemption to the self-isolation and day 8 test requirements for individuals arriving from an amber list country who have not been in, departed from, or transited through either a red list country or mainland France (including Corsica) in the 10 days prior to arrival in England and:
  - who have completed a course of doses of an authorised vaccine under the UK vaccine rollout, arriving from an amber list country. To qualify for this exemption, individuals must meet all of the requirements outlined in para 7.2.1;
  - who have been vaccinated under the UK vaccine roll-out overseas. To qualify for this exemption, individuals must meet all of the requirements outlined in paragraph 7.2.2;
  - for certain specified individuals arriving from an amber country:
    - who have participated, or are participating, in a clinical trial of an authorised vaccine and is able to provide sufficient proof.
    - who are ordinarily resident in the UK and under the age of 18 upon arrival in England.
  - In line with the reduced testing requirements for the groups mentioned above, update testing requirements for amber list arrivals who are currently required to undertake workforce testing under regulation 7 of the Regulations, or testing for offshore oil workers under regulation 8 of the Regulations. This is done to ensure that people who would qualify for the new exemption, except that they have a particular critical job specified in the Regulations, are not unfairly or disproportionately required to continue to take more testing.
  - Update the provisions around private test providers and the conditions for mandatory testing to ensure that private provider data gathering and reporting meets the requirements of the amber vaccine relaxation and exemption
  - Introduce a requirement for operators to carry out the necessary evidence checks on individuals seeking to benefit from the above relaxations (“the Operator Evidence Check Requirement”). Additionally, to introduce a requirement for operators to develop, implement and maintain processes and systems that ensure that the Operator Evidence Check Requirement is complied with, as well as to retain records

relating to these systems. There is a corresponding requirement for passengers: part of the criteria of the new exemption for fully vaccinated people or clinical trial participants will be an obligation to show their evidence if asked by an operator or immigration officer.

- Correct minor or technical errors contained within the International Travel and Operator Liability Regulations. Accordingly, this instrument is issued under the free issue procedure.
- Update the information to be provided to passengers to reflect the new exemption for eligible category 2 arrivals.
- Update the list of category 1 countries and territories, referred to colloquially and in guidance as the “Green List”.
- Update the list of category 3 countries and territories, referred to colloquially and in guidance as the “Red List”.
- Update the list of countries that are permitted to arrive at one of two designated red list terminals which are part of the pilot to include Cuba and Indonesia.

### **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 and the impact of vaccinations on transmission, the Government considers these measures are urgently necessary to protect public health whilst ensuring that restrictions in place remain proportionate.
- 3.2 In the case of updates to red and green list countries and territories, the Government is acting accordingly to prevent the ingress from overseas of variants of concern. Delaying the implementation of these measures could allow a variant of concern to spread.
- 3.3 In the case of vaccinations, the Government is acting to minimise the impact of these Regulations on individuals where appropriate to reflect the successful impact of the UK vaccination programme and change in public health advice. The Government is acting as swiftly as possible to minimise the obligation to isolate at home and the cost of additional testing for passengers eligible for this exemption.
- 3.4 Further, this instrument comes into force before being laid. In the days leading up to the planned laying date of these Regulations, relevant data was received which showed a significant public health risk would be posed by permitting arrivals from mainland France (including Corsica) to come into England without having to isolate. The Secretary of State considered that implementing this exemption for people arriving from France posed an unacceptable increase in danger to public health, and so the Regulations were drafted to reflect that the exemption should not extend to arrivals from France. Unfortunately it was not possible to complete this process in time to lay the document before the closure of Parliament on Friday 16 July.
- 3.5 The Department has written to the two Speakers on 19 July 2021 to explain the circumstances and has sought to mitigate the impact of this late laying through Communications and Guidance to the public.

*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)*

3.6 Not applicable.

**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 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](#) published on [www.legislation.gov.uk](http://www.legislation.gov.uk). A detailed description of the requirements on passengers is set out in paragraph 7 onwards.

**7. Policy background**

*What is being done and why?*

*Requirement to provide information (Regulation 3)*

7.1 This instrument updates the Regulations to ensure that individuals arriving in England from outside the common travel area are required to provide information about their vaccination status using the Passenger Locator Form. This will enable operators of carriage services to check the evidential requirements are met for such passengers to enjoy the exemption from self-isolation and day 8 testing. There is a corresponding amendment to Schedule 6 to provide that eligibility for this exemption is information which the passenger must provide if they wish to benefit from the exemption.

*Requirement to book and undertake tests (Regulations 5(1) and 6) and the requirement to self-isolate (Regulation 9)*

7.2 This instrument amends the Regulations to introduce a relaxation to the self-isolation and day 8 test requirements for vaccinated travellers vaccinated in the United Kingdom and other eligible individuals. This minimises the imposition of restrictions on individuals to reflect the positive impact of the UK vaccination programme on transmission to ensure that the provisions remain proportionate. The instrument does this by:

7.2.1 Introducing a relaxation to the self-isolation and day 8 test requirements for individuals who have completed a course of doses of an authorised vaccine under the UK vaccine rollout, arriving from an amber list country. To qualify for this exemption individuals must be meet all of the following requirements. The individual must:

- not have been in, departed from, or transited through a red list country or territory or mainland France (including Corsica) in the 10 days prior to arrival in England;
- have completed their course of an authorised Covid-19 vaccination with the final dose having been received at least 14 days prior to arrival in England;
- have received that course of doses in the UK;
- have declared on their Passenger Locator Form (PLF) that they meet the criteria for the exemption; and
- be able to provide proof of vaccination if requested by an appropriate official by way of certification issued by the NHS, either through the NHS app, NHS.UK or in writing by an NHS letter, or equivalent letter from NHS Scotland, NHS Wales or the Department for Health in Northern Ireland.

7.2.2 Introducing an exemption to the self-isolation and day 8 test requirements for individuals arriving from an amber list country who have been vaccinated under the UK vaccine roll-out overseas (or who have received one dose in the UK and one in the overseas roll-out), and who have not been in, departed from, or transited through a red list country or territory or mainland France (including Corsica) in the 10 days prior to arrival in England, who are one of the following:

- Members of staff of the Government or Crown posted overseas who have been vaccinated under the FCDO staff vaccination programme, or their dependents under the age of 18 (who do not have to have been fully vaccinated);
  - Residents of the Crown Dependencies or the British Overseas Territories who have been vaccinated under an agreement with the UK government;
  - Military or civilian personnel, government contractors and their dependents at a military posting overseas who have been vaccinated under the UK Defence Medical services vaccination scheme.

Or the dependants of people who are eligible under one of these three routes who are under the age of 18.

People vaccinated overseas will be required to have declared this on the PLF and be able to provide proof if asked by an immigration officer or the operator.

7.2.3 Introducing an exemption to the self-isolation and day 8 test requirements for individuals not vaccinated using an authorised vaccine arriving from an amber list country (who have not been in, departed from, or transited through a red list country or mainland France (including Corsica) in the 10 days prior to arrival in England), who are one of the following:

- An individual who has participated, or is participating, in a clinical trial of an authorised vaccine (and has declared this on the PLF and can provide proof).
- An individual who is ordinarily resident in the UK and under the age of eighteen upon arrival in England.

7.3 This instrument updates the Regulations to ensure that individuals subject to the above exemptions, arriving in England from amber-list countries and territories, are still

required to possess a booking for a day 2 test upon arrival and provide evidence of such, if requested by an immigration officer or the operator.

- 7.4 If a day 2 test generates a positive result, the individual who has tested positive will need to self-isolate for 10 days after the day on which they took the test. They will not be required to undertake a day 8 test.
- 7.5 This instrument also updates the Regulations to ensure that:
- The requirement to book and undertake a day 8 test is updated in line with the vaccine relaxation and exemption.
  - Requirements for information to be gathered by private testing providers and reported to Public Health England and the Secretary of State meets the requirements of the vaccine relaxation and exemption.
  - Amber arrival individuals, meeting the same qualifying vaccination status or exemption as the standard testing rules, who are subject to workforce testing, have their testing and isolation regime updated.
- 7.6 Individuals arriving from or transiting through mainland France (including Corsica) in the 10 days prior to arrival in England are not able to enjoy the relaxation and exemption delivered to self-isolation and day 8 test requirements delivered by this amending instrument. This means that such arrivals will, regardless of vaccination status, continue to be required to quarantine in their own accommodation for 10 days, as well as take a PCR test on or before day 2 and on or after day 8. The intention of this policy is to reduce the risk of such arrivals, who might still be infected with the potentially vaccine-escaping Beta variant, transmitting that infection within England.

#### Amendments to Operator Liability

- 7.7 This instrument updates the Regulations to introduce a requirement for Operators to:
- Ensure that individuals seeking to benefit from the amber vaccine relaxation have the evidence they need to prove their eligibility.
  - Develop, implement and maintain processes and systems that ensure that the above requirement is complied with.
  - Retain records and information of the steps that they have taken to develop and maintain the new processes.
- 7.8 The new requirements are supported by new offences and defences. The fines introduced for these new offences are unlimited upon prosecution. The Fixed Penalty Notices for each offence are £2000, £4000, and £4000 respectively. These levels have been deemed appropriate in order to secure compliance.

#### Amendments to Schedule 12 (information for passengers)

- 7.9 This instrument amends the information that operators must supply to passengers at different points of their journey. In the interest of simplicity, the wording of the Onboard announcement gives broad information and does not provide detailed nuance. The passenger will already have completed the Passenger Locator Form by the time they hear the announcement, so should already be aware of the detailed legal requirements that apply to them. More detailed information about these requirements

will also be available to passengers through alternative means, for example, on gov.uk and at ports.

Amendments to correct errors

7.10 This instrument amends errors identified in the International Travel and Operator Liability Regulations:

- Regulations 5 and 6 of this instrument correct regulation 3(10) and regulation 4(6) respectively to insert new sub-paragraphs to correct an omission to apply exemptions to category 1 (green list) arrivals
- Regulation 7 makes amendments to regulation 5 correcting previous omissions when adding category 1 countries in the International Travel and Operator Liability Regulations when they were laid. In particular new regulation 5(5) will correct a previous omission which failed to apply testing obligations under regulation 8 to offshore oil installation workers who arrive from green list countries, and these will therefore no longer fall into the cohort of people required to take mandatory testing under regulation 6 (a change made by regulation 7(a)(i)(bb) of this instrument).
- Regulation 9(a) in this instrument corrects an erroneous cross-reference in regulation 8.
- Regulation 18(c)(ii) inserts a reference to regulation 4ZA of the Health Protection (Notification) Regulations 2010 into paragraph 11(4) of Schedule 4, which should have been inserted into the Regulations when regulation 4ZA was inserted into the Notification Regulations.

Amendments to “red list” and “green list”

7.11 The identification of new variants of SARS-CoV-2 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 International Travel Regulations set out various requirements for persons returning from foreign countries or territories including additional requirements for people who had travelled or have been in red list countries in the 10 days prior to arrival in England, including the requirement to self-isolate in designated accommodation for 10 days.

7.12 This instrument amends the Regulations to:

7.12.1 Add the following countries and territories to the “Green List”:

- Bulgaria
- Croatia
- Hong Kong
- Taiwan

7.12.2 Remove the following countries and territories from the “Green List”:

- The Balearic Islands
- The British Virgin Islands

7.12.3 Add the following countries and territories to the “Red List”:

- Cuba
- Indonesia
- Myanmar

- Sierra Leone

7.12.4 Permit direct flights from the following countries and territories on the condition that they arrive at one of the two dedicated Red terminals. This is an extension to the pilot for dedicated red list terminals.

- Cuba
- Indonesia

## **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 International Travel and Operator Liability regulations (ITOLs), 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 Jessica Sterling at the Department of Health and Social Care (email: [Jessica.Sterling@dhsc.gov.uk](mailto:Jessica.Sterling@dhsc.gov.uk)) can be contacted with any queries regarding the instrument.

15.2 Ronnie Haynes, Deputy Director at the Department of Health and Social Care, can confirm that this explanatory memorandum meets the required standard.

15.3 Jo Churchill, the Parliamentary Under Secretary of State (Minister for Prevention, Public Health and Primary Care) can confirm that this explanatory memorandum meets the required standard.