

21 July 2021

Dear Colleague

**Re. The Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 6) Regulations 2021**

At 4am on Monday 19 July 2021 the [Health Protection \(Coronavirus, International Travel and Operator Liability\) \(England\) \(Amendment\) \(No. 6\) Regulations 2021](#) (the **Amending Regulations**) came into force. As you will be aware, the Amending Regulations amend the [Health Protection \(Coronavirus, International Travel and Operator Liability\) \(England\) Regulations 2021](#) (the **Existing Regulations**) and place an additional requirement on operators in respect of passengers arriving into England from a [Category 2 “amber list” country or territory](#) to undertake additional checks where passengers declare on their Passenger Locator Form (PLF) that they meet the COVID-19 vaccination eligibility criteria for reduced isolation and testing. The CAA is the enforcement body for the Amending Regulations, and continues to act as the enforcement body in respect of airline operators under the Existing Regulations, in England.

The Amending Regulations introduce an exemption for passengers arriving from amber list countries or territories (other than Metropolitan France) who have been fully vaccinated with an authorised vaccine<sup>1</sup> or who have participated or are participating in a clinical trial of a vaccine<sup>2</sup> (the **Vaccination Exemption**). Such passengers are to be treated as if they have been in a [Category 1 “green list” country or territory](#). UK residents under the age of 18 may also use this exemption when travelling from an amber list country.

For a passenger to avail themselves of the Vaccination Exemption they must:

1. have not visited or transited<sup>3</sup> through a [Category 3 “red list” country or territory](#) or Metropolitan France<sup>4</sup> in the ten days before arrival into England;
2. be in possession of a valid<sup>5</sup> pre departure test with a negative result;
3. complete a PLF declaring that they are traveling from an amber list country and that they meet the Vaccination Exemption eligibility criteria;
4. have booked a day 2 test package and entered the reference on their PLF; and
5. be able to provide proof that they meet the Vaccination Exemption eligibility criteria.

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<sup>1</sup> As defined in the Amending Regulations (and including vaccinations under the United Kingdom vaccine roll-out overseas), having received the course of doses in the United Kingdom, and having received the final dose before the start of the period beginning with the 14th day before the date of their arrival in England.

<sup>2</sup> As specified in the Amending Regulations, for vaccination against coronavirus carried out in accordance with the requirements of the Medicines for Human Use (Clinical Trials) Regulations 2004.

<sup>3</sup> When passengers arrive in England they must follow the rules for the highest risk country or territory they have been in or passed through in the previous 10 days.

<sup>4</sup> The list of other countries for which the exemption does not apply is subject to change.

<sup>5</sup> [Coronavirus \(COVID-19\) testing before you travel to England - GOV.UK \(www.gov.uk\)](#)

Where a passenger indicates on their PLF that they qualify for the Vaccination Exemption, air carriers are required to check that the passenger is in possession of the necessary proof that they meet the eligibility criteria (for example through checking the passenger's NHS App or NHS COVID Pass Letter for the passenger's vaccination status or by checking the passenger's proof of age and residency for the exemption for under 18s). Further, air carriers must:

- implement and maintain processes and systems to ensure that they can comply with the requirement to conduct the Vaccination Exemption check; and
- retain records and information of the steps that they have taken to comply this requirement.

Where the CAA requests, the carrier must provide copies of the records and such other information as is necessary to determine whether the requirements have been complied with.

The Amending Regulations give the CAA further enforcement powers to issue fixed penalty notices (**FPNs**) of £4,000 for two offences:

1. **Operator Systems Offence (OSO)** – where an air carrier fails to implement and maintain processes and systems to ensure that they can comply with the requirement to conduct the Vaccination Exemption check; and
2. **Operator Systems Records Offence (OSRO)** – where an air carrier fails to sufficiently take records and, on request, fails to provide them to the CAA.

These new offences are in addition to the existing PLF offence (i.e. to ensure that passengers arriving into the UK have completed a PLF). In circumstances where, having performed the exemption check, the airline determines that the passenger does not possess the necessary proof that they meet the Vaccination Exemption eligibility criteria, the passenger will be expected to fill out a new PLF. In such circumstances, the passenger should be requested to complete the new PLF as an amber passenger. If a passenger arrives in the UK having incorrectly declared the Vaccination Exemption or without the proof to demonstrate it, an operator would be liable for a £2,000 fixed penalty notice.

The CAA appreciates that these new requirements have been introduced quickly, with only a very limited opportunity for operators to both understand and implement the processes and systems necessary to ensure compliance. The CAA notes that, in relation to the operator systems offence, it is a defence for the carrier to show that it was not reasonably practicable to have the processes and systems in place at the relevant time. Notwithstanding these points, we expect airlines to have made every effort to comply with the new requirements from the date of their introduction. To this point, the CAA further notes that operator compliance with the pre-existing Covid health requirements is now generally very good, and we anticipate that operators will be able to amend their current processes and systems to incorporate the new Vaccination Exemption check.

It remains our intention<sup>6</sup> to exercise our powers in the most efficient and effective way possible within the existing legal framework. When considering our approach to enforcement, the CAA will continue to have regard to overall airline performance in terms of compliance, the individual circumstances of any breach(es) and any associated relevant mitigation. The CAA will not hesitate in bringing prosecutions against operators where other methods of enforcement have failed and/or it is the most appropriate course of action. The CAA intends to focus its work on the Operator Systems Offence, and we will shortly begin a programme of audits on the processes and systems adopted by operators to comply with the new requirements, and for assuring their own compliance (i.e. actively checking that processes and systems are working practice). It is therefore key for airlines to record and retain the records and information necessary to demonstrate that compliance, and to respond swiftly to any request from the CAA for this documentation.

In addition to these audits, the CAA intends to carry out spot checks at various UK airports<sup>7</sup> to determine how well airlines are complying with the new requirements in practice. During

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<sup>6</sup> This approach is consistent with our published [Regulatory Enforcement Policy](#).

<sup>7</sup> And, in due course, spot checks at non-UK airports where this will allow the CAA to observe Vaccination Exemption checks taking place.

the course of these spot checks, should the CAA identify a passenger that has claimed the Vaccination Exemption on their PLF but who is not able to produce the necessary proof that they qualify for the exemption, the CAA may issue an FPN to the airline. In such cases, it is a defence for the airline to show that a passenger presented a document purporting to be the required evidence which the operator, or a person acting on behalf of the operator, could not reasonably have been expected to know was not the required evidence. Airlines have the discretion to choose how they mount such a defence, the CAA would however expect to see contemporaneous evidence that the airline had carried out the exemption check, for example as captured in the passengers booking (e.g. the PNR), or through a 'statement of truth' taken from the member of staff that performed the check on the passenger concerned. The absence of this evidence may limit an operator's ability to rely upon in the statutory defence provided.

From the first introduction of the Covid health requirements on airlines the CAA has endeavoured to be open and transparent in its approach to compliance and enforcement. I would like to extend, again, the offer to engage with any airline in relation to the practical implementation of these new requirements.

Yours sincerely

A handwritten signature in black ink that reads "Paul Smith". The signature is written in a cursive, slightly informal style.

Paul Smith  
Group Director of Consumers and Markets