

GENERAL CRIME BRIEFING NOTE

OFFENCES AND REQUIREMENTS RELATING TO TRAVEL DURING THE CORONAVIRUS PANDEMIC

Date: 19 June 2020

Statute: Public Health (Control of Diseases) Act 1984, ss.45B, 45F(2) and 45P(2), and the Health Protection (Coronavirus, International Travel) (England) Regulations 2020

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In addition to the overarching restrictions placed upon the general population since the outbreak of the pandemic, the Secretary of State for Health has now also utilised his powers under ss.45B, 45F(2) and 45P(2) of the Public Health (Control of Diseases) Act 1984 to enact the Health Protection (Coronavirus, International Travel) (England) Regulations 2020 (SI 2020/578) [hereafter 'the Travel Regulations']. These regulations require those who have entered England after recent overseas travel to undergo a 14-day period of isolation and to provide information as to where that period of isolation will take place.

The Travel Regulations came into force on 8 June 2020 and last for 12 months. They must be reviewed every 21 days. They only affect the law of England – similar regulations (albeit with some important differences) apply in Scotland, Wales and Northern Ireland.

The powers and offences created under the Travel Regulations are in addition to the powers created under the Coronavirus Act 2020 to order those persons believed to be potentially infectious, or who have arrived from an infectious area, to go to a place for screening or assessment, to provide samples and submit to testing, and, if necessary, to be quarantined.

In what circumstances do the Travel Regulations apply?

The Travel Regulations apply to persons arriving in England from outside the 'Common Travel Area' [hereafter 'CTA']. The CTA is as defined under s.1(3) of the Immigration Act 1971, namely the United Kingdom of Great Britain and Northern Ireland, the Channel Islands, the Isle of Man and the Republic of Ireland.

Any person coming into England from within the CTA is also covered by the Travel Regulations, if, at any point in the previous 14 days, they have been outside the CTA.

What are the requirements under the Travel Regulations?

The first requirement under the Travel Regulations is under Regulation 3 in relation to the 'Passenger Locator Form'. Any person subject to the requirement must provide, upon their arrival

in England (or up to 48 hours beforehand), the following information (unless they have already provided that information on an equivalent form in another part of the UK): name, sex, date of birth, passport number, telephone number, home address, email address, an emergency contact name and number, and the address(es) where they intend to self-isolate and date of arrival there. They must also provide full details of how they travelled, including the operator, booking reference, flight/train/ticket number and the country they are arriving from. They must also provide the full name, date of birth of any child for whom they have responsibility that they are travelling with, and details of the relationship. If any of those details change during the period of self-isolation, persons affected should provide an updated form.

The second requirement under the Travel Regulations is under Regulation 4 in relation to self-isolation. Any person subject to the requirement must self-isolate at the address specified on the Passenger Locator Form as the intended place of self-isolation, or, where not possible, in accommodation arranged by the Government (e.g. in the case of asylum-seekers). More than one address can be specified where a legal obligation requires a change of address, or an intermediate overnight stop is required to reach the ultimate residence. Those subject to the requirement must travel directly to the place where they are to self-isolate and remain there for 14 days or until they leave England.

'Self-isolation' is defined as not leaving the place where one is residing except to (i) leave England, (ii) seek medical assistance, (iii) fulfil a legal obligation, (iv) avoid injury, illness or a risk of harm, (v) on compassionate grounds e.g. to attend a funeral of a close family member, (vi) move to a different address specified on the Passenger Locator Form or, (vii) in exceptional circumstances, such as to obtain food where not possible to obtain them in any other manner, or access critical public services, or where it becomes impractical to remain in the self-isolation place. Note that no defence of 'reasonable excuse' exists to the criminal offence of failing to comply with Regulation 4 (see below), unlike the other general restrictions on the population.

'Self-isolation' does not mean isolation from any resident or member of the household in the place where the traveller is staying. Those other persons are not required to isolate.

Who is exempt from the Travel Regulations?

There are a number of persons who are exempt from the requirement to self-isolate for 14 days under Part 2 of Schedule 2 of the Travel Regulations.

It does not apply to transit passengers or extradited prisoners (or those accompanying them). It also does not apply to certain categories of persons who are required to travel into the UK for their work, e.g. Crown servants undertaking essential policing or government work, aircrew, sailors, road haulage workers, policing and government officials, postal workers and healthcare workers.

Those coming into the UK for pre-arranged healthcare are permitted to travel to and from the healthcare provider and their place of residence but must complete the passenger locator form.

Seasonal agricultural workers (in certain types of 'edible horticulture' only) are allowed to work but must stay on the farm where they are working for the isolation period and must complete the passenger locator form.

People who reside in the United Kingdom, but usually travel outside the country for work at least once a week, or conversely people who live outside the UK, but usually travel into the country for work at least once a week must complete the passenger locator form, but are not required to self-isolate.

A more limited group of people are exempt from both the isolation requirement and the passenger locator form requirement under Part 1 of Schedule 2 of the Travel Regulations. They include UK officials and contractors working on essential border security matters and overseas defence staff who have Ministry of Defence approval. Similar arrangements apply to certain overseas border security officials.

Representatives of foreign countries on official governmental business in the UK, and accredited members of diplomatic missions etc, along their families, are not required to complete the passenger locator form. They are required to self-isolate for 14 days, unless their work is essential to the government business or diplomatic mission in question and cannot be done whilst self-isolating.

A list, in not-legal language, of those who are exempt from the requirements can be found 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>

Are there restrictions on how the information provided by a traveller may be used?

Regulation 9 states that information provided pursuant to Regulation 3 may only be used or disclosed to other persons for the purposes of carrying out a function under the Travel Regulations or preventing or monitoring the spread of the infection, or as permitted by other legislation. Data protection legislation (as defined by s.3 of the Data Protection Act 2018) remains applicable to this information.

Regulation 10 states that no information provided pursuant to Regulation 3 may be used by the prosecution in criminal proceedings, nor may any question be asked about such information by the prosecution, save in respect of criminal proceedings under the Travel Regulations themselves, or for perjury.

What powers of enforcement are created by the Travel Regulations?

Under Regulation 5, a constable or person authorised by the Secretary of State, may direct a person they reasonably believe to be in contravention of the requirement to self-isolate under Regulation 4 to return to the place where they are self-isolating, or to use reasonable force to remove them to that place or other accommodation facilitated by the Secretary of State for the purpose of self-isolation. A constable or authorised person may also direct an individual with

reasonability for a child to take that child to the child's place of self-isolation. The powers under Regulation 5 may only be exercised where a constable or authorised person considers it necessary and proportionate to do so.

What offences are created by the Travel Regulations?

Under Regulation 6, a person commits an offence if they, without reasonable excuse,

- (i) contravene a requirement under Regulation 3 to complete the Passenger Locator Form,
- (ii) fail to comply with a requirement or direction from an authorised person under Regulation 5, or
- (iii) obstruct a person carrying out a function under the Travel Regulations.

The same offence is committed by a person who fails to comply with the self-isolation requirement under Regulation 4, albeit that there is no defence of 'reasonable excuse' in relation to a failure to comply with that Regulation.

A person who intentionally or recklessly provides false or misleading information also commits an offence.

Those offences are punishable by a fine only, up to the maximum permitted on summary conviction, currently £5,000.

Regulation 7 enacts a fixed penalty notice ('FPN') scheme, payable to the local authority specified in the FPN, in relation to offences committed by persons aged 18 or over. Where an FPN is issued, no proceedings may be taken for the offence within 28 days of the date of the FPN, and the person may not be convicted of the offence if the FPN is paid. There are requirements as to the relevant detail to be included on the FPN.

The amount to be paid under an FPN in respect of failing to complete the Passenger Location Form, or providing false or misleading information on the form, or obstructing anyone carrying out a function in relation to the requirement to provide a form, is £100, or £50 if paid within 14 days of the date of the FPN. If the person has already received one FPN, then for the second FPN the amount due is increased to £200. For the third FPN, it is now £400. For the fourth FPN, it is now £800. For the fifth FPN, it is now £1,600. Finally, for the sixth and any subsequent FPN, the amount due is £3,200.

Where the contravention of the Travel Regulations relates to a failure to comply with Regulation 4 (self-isolation) or Regulation 5 (following directions from a constable) or obstructing any person carrying out a function in relation to those particular Regulations, then the amount to be paid under the FPN is, in all cases, £1000.

FPNs may be issued in respect of any of the Travel Regulations by a constable, or a person designated by the Secretary of State. They may be issued by immigration officer, but only in respect of Regulation 3 (the Passenger Locator Form).

Proceedings for an offence under the Regulations may be brought by the CPS or by a person designated by the Secretary of State.

This briefing note was produced by [Philip Stott](#). This note should not be taken as constituting formal legal advice. To obtain expert legal advice on any particular situation arising from the issues discussed in this note, please contact our clerking team at barristers@qebhw.co.uk. For more information on the expertise of our specialist barristers in criminal and regulatory law please see our website at www.qebholliswhiteman.co.uk.