



23 February 2022

Dear Colleague

Re. The Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 2) Regulations 2022

At 4am on Friday 11 February 2022 the Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 2) Regulations 2022, (the **Amending Regulations**) came into force. The Amending Regulations amend the [Health Protection \(Coronavirus, International Travel and Operator Liability\) \(England\) Regulations 2021](#) (the **Existing Regulations**) and continue to place a requirement on operators in respect of passengers arriving into England to undertake checks of passengers' Passenger Locator Form (PLF) and the evidence to support the declarations made within the PLF. The CAA is the enforcement body for the Amending Regulations.

We anticipate similar legislation will be introduced in Scotland, Northern Ireland and Wales.

The Amending Regulations make changes to the way in which operators are accountable for ensuring passenger compliance. The obligations on operators and means of enforcement have changed from a "per passenger" model to a more holistic systems based requirement. The requirement to provide passengers with information under Regulation 13 remains a "per passenger" operator offence.

The Amending Regulations replace the operator requirements in Regulations 16, 17, 17A and 18 of the Existing Regulations with a single requirement under Regulation 15A(1) to have in place adequate systems and processes to ensure that passengers (i.e. not exempt or with a reasonable excuse for non-compliance) are, where applicable, in possession of:

- A completed PLF;
- evidence of Schedule 4 exemptions (e.g. where a passenger is seeking to rely on a job-based exemption);
- notification of negative pre-departure test result;
- evidence of vaccination status where that is indicated on the PLF.

These are referred to below as the "passenger requirements".

Regulation 15A(3) requires operators to retain such records and information as required to show that they have complied with Regulation 15A(1) and the CAA has the power to request copies of such records and information (15A(4)) within a specific time period (15A(5)).

Civil Aviation Authority

11 Westferry Circus, Canary Wharf, London, E14 4HD www.caa.co.uk

Telephone: 0330 138 3042 paul.smith@caa.co.uk

Regulation 15A(6) sets out criteria which the CAA must take into account in determining whether an operator has complied with Regulation 15A(1) which includes:

- the regime by which passengers are checked for compliance with the passenger requirements, together with the approach to retaining contemporaneous evidence obtained;
- the information the operator has collected about passengers who have not complied with a passenger requirement;
- the existence and quality of any guidance or training programmes for those involved in the day-to-day operation of the processes and systems;
- the appointment by the operator of a named contact and notification of this to the CAA;
- the speed and effectiveness of any steps the operators take in response to recommendations made by the CAA; and
- any failure to comply with an information request from the CAA.

The CAA must also take into account any other matter which it considers to be relevant. This may include, for example, any findings or observations arising from spot checks at airports.

We will provide some further guidance to Operators in the coming weeks on our approach to assessing compliance under the new holistic systems and processes requirement. In the meantime, we would urge operators to take steps to comply with the new requirements including putting in place a named contact and notifying this to the CAA, pursuant to Regulation 15A(6)(i) as early as possible.

In addition to the Amending Regulations, the Airline Operational Guidance¹ has been updated to reflect the changes to the requirements placed on both passengers and operators. This sets out in further detail the requirements on air carriers to undertake checks of passengers prior to arrival in the UK (the **Evidence Check**):

- Air carriers are required to check the PLF of all passengers arriving at a port in the UK, unless the passenger meets one of the exemption criteria set out in the Airline Operational Guidance.
- Where a passenger indicates on their PLF that they qualify as fully vaccinated, 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).
- Where a passenger indicates on their PLF that they do not qualify as fully vaccinated, air carriers are required to check that the passenger is in possession of a negative pre-departure test (PDT).
- If the front page of the PLF indicates that a passenger is claiming a job related exemption air carriers are required to check that the passenger has evidence to support the exemption with them.

¹ Distributed via the SIREN messaging service and as amended from time to time

Further, air carriers must:

- implement and maintain systems, processes, procedures and governance and assurance mechanisms to ensure that the passenger requirements checks are being carried out (the **Systems Requirement**); and
- retain records for audit purposes to demonstrate compliance with the evidence check and Systems Requirement (the **Records Keeping 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 CAA will use its information gathering powers in a number of situations, including to obtain sufficient information to determine whether an operator is satisfying the requirements in 15A(1) and where other evidence indicates a compliance issue.

The CAA expects 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 based on the evidence that we have, operator compliance with the Existing Regulations is now generally very good. Whilst the enforcement regime has changed from a "per passenger" model to a systems based obligation, the underlying requirement to check that relevant passengers are in possession of required documentation has not changed.

It remains our intention² to exercise our powers in the most efficient and effective way possible within the 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 continue to engage with airlines to carry out audits on the systems, processes, procedures and governance and assurance mechanisms adopted by operators to comply with these requirements. The CAA expects airlines to retain records to support these audits in line with the records keeping requirement. Further, the CAA expects airlines to respond swiftly to any request from the CAA for this documentation.

In addition to these audits, the CAA will continue to carry out spot checks at airports across the UK to help determine how well airlines are complying with the new requirements in practice. During the course of these spot checks, should the CAA: identify a passenger that has declared on their PLF that they qualify as fully vaccinated but who is not able to produce the necessary proof that they qualify for the exemption; or identify a passenger who has not declared themselves as fully vaccinated, but is not able to produce a negative PDT (a **passenger violation**), the CAA will record and share this information with the airline. This information may be used as evidence to demonstrate non-compliance with the Systems requirement where a number of passenger violations are identified in a way that suggests there may be more systemic failures on the part of the operator. Further, the CAA will consider other sources of evidence, such as information received from UK Border Force.

Where the CAA identifies evidence that an airline is not meeting its requirements under Regulation 15A it will issue an FPN for £4,000 and will expect the airline to undertake remedial action to ensure future compliance in a timely manner.

² This approach is consistent with our published [Regulatory Enforcement Policy](#).

The Amending Regulations also make it clear that where an FPN has been issued in respect of an offence and paid by the operator, the CAA may issue a subsequent FPN where the breach continues. This emphasises the need for operators to take appropriate remedial action where non-compliance has been identified by the CAA. The CAA also has the power to bring prosecutions against operators where other methods of enforcement have failed and/or where the CAA considers it is the most appropriate course of action.

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 letters are cursive and slightly slanted to the right.

Paul Smith
Group Director of Consumers and Markets