

Covid-19, passenger quarantine, and the Common Travel Area (CTA): How are requirements for 14 day self-isolation intended to work in the CTA?

CAJ Briefing Note, May 2020

In May 2020, in response to the Covid-19 pandemic, the British and Irish governments announced measures requiring incoming travellers to self-isolate upon arrival. These measures are part of government plans to ease lockdown and are intended to manage the risk of transmissions being reintroduced from abroad as international travel restrictions are eased. The ‘self-isolation’ in this context is more akin to quarantine rather than the present general ‘stay at home’ measures of lockdown which may permit, for example, going out for exercise or work or routine contact with other household members.

Irish Government Guidance

On 1 May 2020 the Irish government published their *Roadmap for Reopening Society and Businesses*. This included guidance on Travel Restrictions and controls at airports and ports. The guidance set out the following;

- **From Friday 24 April 2020, “All passengers arriving in Ireland from overseas are expected to self-isolate for 14 days on entry into the State”.**
- **Incoming passengers are required to complete a Public Health Passenger Locator Form showing their contact details and the address at which they will self-isolate.**
- **A system of spot checks will be used to verify incoming passengers are complying with self-isolation.¹**
- **“Self-isolation means staying indoors and completely avoiding contact with other people.” People who you live with will also need to restrict their movements. Self-isolation requirements apply regardless of citizenship and “which country you have travelled from”, with limited exemptions including supply chain workers and “passengers who are transiting via Ireland to another jurisdiction including Northern Ireland.”²**

Exempt passengers will need to partially complete the form stating their reason for exemption. Information provided online confirms that people who “return to the Republic of Ireland from Northern Ireland” are exempt from self-isolation. There is no such exemption for passengers arriving into the Irish State from Great Britain (England, Scotland or Wales) or elsewhere in the CTA (e.g. Isle of Man) – except in the circumstance of airport transit passengers (persons “briefly stopping over at an airport on your way to another country”). The Irish government continues to advise against all

¹ <https://www.gov.ie/en/news/58bc8b-taoiseach-announces-roadmap-for-reopening-society-and-business-and-u/?referrer=/roadmap/>

² <https://www2.hse.ie/file-library/coronavirus/covid-19-public-health-passenger-locator-form.pdf>

non-essential travel overseas. This includes Great Britain, but does not apply to Northern Ireland.”³

On 14 May 2020, the Secretary of State for Northern Ireland claimed at the Westminster NI Affairs Committee that the 14 day review period for travellers from Great Britain was under review. This was promptly denied by the Irish government.⁴

The Passenger Locator Form issued by the Irish government includes a reference to potential data sharing with ‘relevant authorities in Northern Ireland’.⁵ In the apparent absence of reciprocal arrangements it is not clear what this data would presently be shared for, but the reference on the form does leave this option open.

UK Government Guidance

On 11 May 2020, the British government published *Our Plan to Rebuild: The UK Government’s Covid-19 Recovery Strategy*.⁶ This included guidance on International Travel:

- **All international arrivals are to self-isolate in their accommodation for 14 days on arrival into the UK. “Where international travellers are unable to demonstrate where they would self-isolate, they will be required to do so in accommodation arranged by the Government.”**
- **Some exemptions apply, including for ‘security of supply into the UK’, work supporting ‘national security’ or ‘critical infrastructure’, and “All journeys within the Common Travel Area [which] will also be exempt from these measures.”**
- **These measures will come into force ‘as soon as possible’.**
- **All international arrivals will be required to supply their contact and accommodation information. They will also be ‘strongly advised’ to download and use the NHS contact tracing app.**

The UK government states that all journeys ‘within’ the Common Travel Area will be exempt from the self-isolation requirement, although it is not clear if this covers journeys that originate outside the CTA, but then involve a subsequent journey within the CTA (e.g. landing in Dublin from Spain with onward travel to Wales). A later statement from the UK government included arrivals from France as an exemption.⁷

The UK government has stated that further details and guidance, including the date that these measures will come into force, will be set out shortly. The government has also

³ <https://www.gov.ie/en/publication/e885b2-covid-19-coronavirus-travel-advice/>

⁴ <https://www.irishtimes.com/news/politics/covid-19-government-rejects-british-minister-s-claim-of-quarantine-review-1.4253839>

⁵ “The personal data provided in this form will be used to check that passengers are self-isolating for the 14 day period indicated in Governmental guidelines issued on foot of public health advice. Points of entry into Ireland are controlled by the Department of Justice and Equality or An Garda Síochána, who will hold the data securely and, as necessary, may share it with the Health Service Executive or relevant authorities in Northern Ireland.” <https://www2.hse.ie/file-library/coronavirus/covid-19-public-health-passenger-locator-form.pdf>

⁶ <https://www.gov.uk/government/publications/our-plan-to-rebuild-the-uk-governments-covid-19-recovery-strategy>

⁷ <https://www.bbc.co.uk/news/business-52610594>

stated that it is “working closely with the devolved administrations to coordinate implementation across the UK.”⁸

Devolved Administrations

The UK government roadmap applies only to England where it concerns devolved matters,⁹ with each devolved administration indicating that they will be issuing their own plans on matters within their competence and jurisdiction for the easing up of lockdown restrictions. There is a grey area here. Migration policy is a UK ‘excepted’ matter that is not devolved. However, the restrictions relating to international travel are public health measures, and health is commonly a devolved matter. The control of airports is also referenced in the NI devolution statute as a devolved matter.¹⁰

On 23 April 2020, the Scottish government published *Coronavirus (Covid-19): framework for decision making*. This document did not set out any guidance on self-isolation for travellers, but did state: “We will also, with the other nations across the UK, need to carefully consider ‘port health’ – the impact of international travel on transmission of the virus. It is unlikely that we will be able to contain the virus domestically, without some form of surveillance of those coming into the country from elsewhere. We will urge the UK government to have this as a part of their approach.”¹¹

On 24 April 2020, the Welsh government produced its own framework. This does not deal with or reference the issue of travel or self-isolation of international passengers.¹²

On 12 May 2020, the Northern Ireland Executive published *Coronavirus: Executive Approach to Decision Making*.¹³ Despite Northern Ireland’s unique position within the Common Travel Area and the high level of cross border travel on the island of Ireland, this document did not address the issue of inbound passengers and self-isolation.

Analysis and Issues Arising

In introducing a public health Covid-19 quarantine border in the CTA, there are a number of alternative approaches that could be followed. In summary, four separate approaches would be to draw ‘Covid-19’ passenger borders:

- Around the CTA as a whole (UK, Ireland and Isle of Man/ Channel islands) and have reciprocal arrangements for travel into the CTA from outside it which then involves a local CTA journey within it.
- Around the islands of Ireland and Britain respectively (as is the case with animal health, or passport controls during the emergency legal framework of WWII) and have separate arrangements for the other islands; necessitating Covid-19 passenger controls between Ireland (north and south) and Great Britain (and the islands);

⁸ <https://www.gov.uk/government/publications/our-plan-to-rebuild-the-uk-governments-covid-19-recovery-strategy>

⁹ Under the devolution statutes (for NI, Scotland or Wales) a distinction is made between matters that are ‘transferred’ to the devolved administrations (e.g. health, housing, education) and matters which are retained by Westminster as either ‘reserved’ (e.g. telecommunications, civil aviation but not airports) or ‘excepted’ (e.g. immigration, armed forces) matters

¹⁰ Northern Ireland Act 1998 schedule 3, paragraphs 4 & 20(d)

¹¹ <https://www.gov.scot/publications/coronavirus-covid-19-framework-decision-making/>

¹² <https://gov.wales/leading-wales-out-coronavirus-pandemic>

¹³ <https://www.executiveoffice-ni.gov.uk/news/executive-publishes-coronavirus-recovery-strategy>

- Around the UK and Irish State border (necessitating countless land border checks on the island of Ireland on what would largely be local journeys);
- Around each devolved administration and the Irish State and islands, respectively (in a similar manner to the stay at home regulations) necessitating checks everywhere including between the jurisdictions of Great Britain largely on local journeys;

The present differentiated approach is the UK government drawing the 'Covid-19 passenger border' around the whole of the CTA and the Irish government drawing the border around (and hence between) the islands of Ireland and Britain. Both governments as well as different enforcement regimes have so far gone for a system of *mutual exemptions* rather than *reciprocal arrangements*. For example, the Irish government will conduct post-arrival enforcement in the form of 'spot checks' to verify that passengers are self-isolating at the given address. However, rather than a reciprocal arrangement for health officials in Northern Ireland to conduct similar spot checks on NI residents (who returned to NI, for example, through Dublin airport from outside the CTA) NI residents are simply to be exempt from the self-isolation requirements. The British government (or devolved administrations) to date have not set out any plans for 'spot checks' on self-isolating passengers. However, the UK does envisage in-port enforcement quarantining passengers in an approved facility if officials are not given a satisfactory address on arrival.

The present approach raises a number of issues:

- Currently it is not entirely clear as to whether the (UK or Irish government) exemption to the requirement to self-isolate applies only to local journeys within the Common Travel Area, or also covers journeys that involve travel external to the Common Travel Area, but then an onward journey within it;
- If journeys involving external CTA travel are also exempt (or if this issue is not explicitly addressed) a gap in self-isolation requirements is created. For example, a passenger flying from New York to Dublin then to London as one journey could be recorded as only arriving into the UK from Ireland and therefore be exempt from self-isolation under the UK government's current reference to 'all' journeys within the CTA, and Ireland's exemption to passengers transiting through Irish airports.
- Equally it is not clear if a person landing in a Belfast airport from Poland and travelling on to their home in Monaghan, will be exempt from self-isolation under the Irish government's guidance exempting passengers who "return to the Republic of Ireland from Northern Ireland". A question arises as to whether the same passenger will instead be quarantined under the UK rules – being required to stay in an 'approved place' in NI for 14 days or whether an address in the Republic, and hence onward CTA travel, will be accepted. The Irish government guidance explicitly states that persons transiting through Ireland to another jurisdiction are exempt. However, UK government guidance does address this scenario.
- The same ambiguity arises with the Irish government's exemption of self-isolation requirements regarding travel from Northern Ireland, but not Great Britain. Does this cover people entering the Republic of Ireland from the north as

part of a journey from Great Britain (e.g. on a ferry from Cairnryan to Larne then on to Donegal)?

- The UK government states that people landing in the UK will be ‘strongly advised’ to download the NHS contact tracing app. However, the UK’s centralised app is incompatible with the decentralised app taken up by the Irish (and other EU governments), and hence a passenger landing in Belfast, but with onward travel to Donegal, will be ‘strongly advised’ to download an app that will not work where they reside. It is not clear if there are cross border data sharing arrangements on contact tracing information with cross jurisdictional privacy safeguards, and if so whether they are reliant on EU law provisions that the UK plans to end in 2020.

The ambiguity in the above arrangements and the tendency towards exemptions rather than safeguarded reciprocal arrangements means that some passengers entering NI or elsewhere from outside the CTA may not be subject to self-isolation requirements. This could create public health risks which would be heightened if persons intentionally seek to evade self-isolation requirements using CTA routes (E.g. NI residents using Dublin Airport and vice versa). This could either be at the behest of individuals or under pressure from unscrupulous employers who wish to send employees abroad but wish for their return to their workplace straight away without a quarantine period.

There are also broader issues. Where exemptions to self-isolation requirements have been set out, for example for people travelling from the Republic of Ireland to Northern Ireland, there is no clear guidance on how border officials will assess a person’s claim to be travelling to or from the exempt jurisdictions. For example, a person arriving into Dublin who wishes to note themselves as exempt on the passenger locator form may find themselves having to prove they are genuinely travelling onwards to Northern Ireland. There is clear risk of racial profiling and discrimination occurring if this is assessed on an ad hoc basis.

At the time of writing the issues arising have not been addressed. The Irish government briefly stated in its *Roadmap for Reopening Society and Businesses* that “Both countries have followed broadly similar approaches to the management of travel from abroad, which in part reflects the Common Travel Area.”¹⁴ The UK government stated in its publication that it is working closely with the devolved administrations to coordinate implementation across the UK.¹⁵ Media has reported that discussions are happening between the NI Executive, UK government and Irish government on creating a working group focusing on self-isolation to ensure consistency in approach and maintenance of the CTA. However, the issue of passenger quarantine is not addressed in NI Executive’s May 2020 roadmap despite the Irish government self-isolation restrictions already having commenced. Whilst the UK intentions were not set out until the day before the NI Executive could publish its own document, the UK’s own international passenger restrictions may (or may not) be imminent.

¹⁴ <https://www.gov.ie/en/news/58bc8b- taoiseach-announces-roadmap-for-reopening-society-and-business-and-u/?referrer=/roadmap/>

¹⁵ <https://www.gov.uk/government/publications/our-plan-to-rebuild-the-uk-governments-covid-19-recovery-strategy>

At present the low numbers of international passengers may limit impact. Travel will increase both within and external to the CTA as the roadmaps are taken forward and hence the issues in this paper will require prompt attention.

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